

EXHIBIT 2

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

ALTERRA AMERICA INSURANCE COMPANY,

Index No. 652813/2012 E

Plaintiff,

-against-

**AFFIRMATION OF
CHRISTOPHER R. CARROLL**

NATIONAL FOOTBALL LEAGUE AND NFL
PROPERTIES, LLC, et al.,

Defendants.

-----X

DISCOVER PROPERTY & CASUALTY
COMPANY, et al.,

Index No. 652933/2012 E

Plaintiffs,

-against-

NATIONAL FOOTBALL LEAGUE, NFL
PROPERTIES LLC., et al.,

Defendants.

----- X

CHRISTOPHER R. CARROLL, ESQ., an attorney duly admitted to practice before
the courts of the State of New York, hereby affirms the following to be true and under penalty of
perjury:

1. I am a partner of the law firm of Kennedys CMK LLP, counsel for Defendants
TIG Insurance Company, The North River Insurance Company and United States Fire Insurance
Company, in the above-captioned matter (the "Insurance Coverage Action"). As such, I have

personal knowledge of the facts and circumstances contained herein, the source of my knowledge being the records and files maintained by my office in the ordinary course of handling this matter.

2. I respectfully submit this Affirmation in support of the Insurers' Memorandum of Law in Support of Motion to Compel Production of Underlying Litigation and Settlement Materials from the National Football League and NFL Properties LLC (the "NFL Parties").

3. The Insurers joining in this submission are as follows: TIG Insurance Company, The North River Insurance Company, United States Fire Insurance Company, Discover Property & Casualty Insurance Company, St. Paul Protective Insurance Company, Travelers Casualty & Surety Company, Travelers Indemnity Company, Travelers Property Casualty Company of America, Continental Insurance Company, Continental Casualty Company, Bedivere Insurance Company, ACE American Insurance Company, Century Indemnity Company, Indemnity Insurance Company of North America, California Union Insurance Company, Illinois Union Insurance Company, Westchester Fire Insurance Company, Federal Insurance Company, Great Northern Insurance Company, Vigilant Insurance Company, Munich Reinsurance America, Inc., XL Insurance America Inc., XL Select Insurance Company, American Guarantee and Liability Insurance Company, Arrowood Indemnity Company, and Westport Insurance Corporation.

4. Attached hereto as Exhibit A is a true and accurate copy of the Updated Analysis of the NFL Concussion Settlement report prepared by Thomas Vasquez, Ph.D. dated July 13, 2018.

5. Attached hereto as Exhibit B is a true and accurate copy of the Preliminary Conference Order entered in the Insurance Coverage Action on April 12, 2013.

6. Attached hereto as Exhibit C is a true and accurate copy of the Stipulation and Order for the Production and Exchange of Confidential Information entered by the Court in the Insurance Coverage Action on May 22, 2013.

7. Attached hereto as Exhibit D is a true and accurate copy of the Transcript of proceedings held in the Insurance Coverage Action on November 16, 2015.

8. Attached hereto as Exhibit E is a true and accurate copy of the Transcript of proceedings held in the Insurance Coverage Action on April 29, 2016.

9. Attached hereto as Exhibit F is a true and accurate copy of the Decision and Order of the Court, denying the NFL Parties' Motion to Stay that was filed on November 1, 2016.

10. Attached hereto as Exhibit G is a true and accurate copy of the Insurers' Second Omnibus Demand for Discovery and Inspection to the NFL Parties, dated February 1, 2017.

11. Attached hereto as Exhibit H is a true and accurate copy of the Insurers' First Omnibus Demand for Discovery and Inspection to NFL Properties, LLC, dated May 10, 2013.

12. Attached hereto as Exhibit I is a true and accurate copy of the Insurers' First Omnibus Demand for Discovery and Inspection to National Football League, dated May 10, 2013.

13. Attached hereto as Exhibit J is a true and accurate copy of the NFL Parties' Objections and Responses to Insurers' Second Set of Document Requests, dated March 17, 2017.

14. Attached hereto as Exhibit K are true and accurate copies of letters exchanged between the Insurers and the NFL Parties regarding, among other issues, the underlying defense and settlement materials dated May 31, 2017, August 22, 2017, October 11, 2017, November 2, 2017, and January 17, 2018.

15. Attached hereto as Exhibit L is a true and accurate copy of the joint letter of the NFL Parties and the Insurers to Mr. Tyler D. Evans, Esq., Law Clerk to the Honorable Andrea Masley, dated February 2, 2018.

16. Attached hereto as Exhibit M is a true and accurate copy of the NFL Parties' Amended Answer to Amended Complaint and Second Amended Counterclaims and Cross-Claims filed in the Insurance Coverage Action on February 15, 2017.

Dated: New York, New York
August 21, 2018

By: /s/ Christopher R. Carroll
Christopher R. Carroll, Esq.

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

Case No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and others similarly
situated,*

Plaintiffs,

v.

National Football League and NFL Properties,
LLC, successor-in-interest to NFL Properties,
Inc.,

Defendants.

Civ. Action No.: 14-cv-00029-AB

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**CO-LEAD CLASS COUNSEL CHRISTOPHER A. SEEGER'S
STATUS REPORT WITH UPDATED ACTUARIAL ANALYSIS**

Co-Lead Class Counsel, recognizing that Year One of the implementation phase of the 65-year Settlement Program had concluded, in accordance with his fiduciary duties to the Settlement Class Members, to keep them informed, and to update the Court in furtherance of its ongoing jurisdiction to oversee the Settlement's implementation phase, determined that it would be appropriate to provide an updated actuarial analysis that reviews the progress of the Settlement Program thus far, and recalculates the projections through Year Sixty-Five of the Settlement Program, based upon the currently available data. As such, Co-Lead Class Counsel respectfully submits the attached Updated Analysis of the NFL Concussion Settlement, prepared by Thomas Vasquez, Ph.D. of Ankura Consulting Group. This update is based upon the Claims Administrator's data through June 30, 2018.

From time to time, Co-Lead Class Counsel expects to provide further updates as additional data become available.

Dated: July 18, 2018

Respectfully submitted,

/s/Christopher A. Seeger

Christopher A. Seeger
SEEGER WEISS LLP
55 Challenger Road, 6th Floor
Ridgefield Park, NJ 07660
Tel: (212) 584-0700
Fax: (212) 584-0799
cseeger@seegerweiss.com

Co-Lead Class Counsel

AN UPDATED ANALYSIS OF THE NFL
CONCUSSION SETTLEMENT

Prepared by:
Thomas Vasquez Ph.D.
Ankura Consulting Group
July 13, 2018

I was originally asked by Co-Lead Class Counsel in *In re National Football League Players' Concussion Injury Litigation*, MDL No. 2323 (E.D. Pa.) to undertake an analysis to assist in settlement negotiations in mid-2013. My conclusions from that work are reflected in the NFL Concussion Liability Forecast, dated February 10, 2014. In late 2014, Co-Lead Class Counsel asked me to prepare a Declaration and to elaborate on certain elements of the work I had conducted for my initial report. A discussion of those analyses is contained in my Declaration, dated November 12, 2014. In March of 2017, I was asked to provide updated analyses to reflect changes to the initial settlement agreement and additional data concerning Class Member participation rates. A discussion of those analyses is contained in my Declaration, dated April 7, 2017. In December of 2017, I conducted an analysis of conclusions reached by Dr. Rubenstein.¹ My conclusions are contained in my report of January 3, 2018.²

I have now been asked by Co-Lead Class Counsel to compare actual approval and payment experience with the original amounts estimated in 2014. My analysis is based on the actual claims experience available through the end of June 2018 – the first fourteen months of experience (the first claim approved for payment was in May 2017).

There are three conclusions that are clear:

- The amount actually approved for payment in the first year (through April 2018) is approximately \$378 million³ - \$154 million or 68% higher than originally estimated in 2014. The approved amount continues to exceed the original estimate. Indeed, the approved amount for May and June was \$47 million – nearly twice the amount estimated in 2014.
- The participation rate in the Settlement as a whole, including the MAF program, is much higher than anticipated. The participation rate is now known - approximately 80% of former players have registered. The achieved participation rate is 21 percent points higher than the 59% estimated in 2014.
- The higher participation rate (and the expansion of eligibility) ensures that the higher approved amounts to date are not simply an acceleration of payments. I now estimate that approximately \$1.4 billion will be paid to class members under the MAF program - \$468 million or 50% higher than originally estimated.

It was expected that the amount approved and paid would be heavily front-loaded. There were a large number of claims from Class Members with lawsuits filed before 2013, who had obtained diagnoses prior to the Settlement, and those who obtained diagnoses after the Settlement but before the Effective Date of the Settlement. These claims were expected to be filed at the opening of the Settlement and would dominate approved and paid claims.

Table 1 shows the updated estimate of the total settlement amounts to be paid under the MAF program. The table splits the total settlement amount into three components – the first year, the following two years, and all subsequent years. In total, due to higher participation rates and

¹ "Expert Report of William B. Rubenstein"; December 3, 2017.

² All four of these documents have been provided earlier and are not reproduced here.

³ Based on experience to date, this amount assumes that 90% of amounts under audit will not be paid. This reduces the total amount by approximately \$38 million.

expanded eligibility I now estimate that approximately \$1.4 billion will be paid to class members under the MAF program - \$468 million or 50% higher than originally estimated.

The actual approved amounts in the first year exceeded the original estimate by approximately \$154 million or 68%. Over the next two years, I now estimate that approved amounts will exceed estimated amounts by approximately \$52 million or 64%. The remaining claims paid (for year Four through the last claim filed) are now estimated to be \$891 million or 42% higher than originally estimated.

Table 1

**Comparison of Original Forecast with Current Actuals and Updated Future
Payments: MAF Only
(Dollars in Millions)**

Time Period	Original Estimate	Actual/ Current Estimate	Actual less Estimated	
			Amount	Percent
First Twelve Months	\$224.5	\$378.1	\$153.6	68.4%
Next Two Years	\$80.6	\$132.3	\$51.7	64.1%
Remaining Years	<u>\$628.3</u>	<u>\$890.62</u>	<u>\$262.3</u>	<u>41.8%</u>
Total	\$933.4	\$1,401.0	\$467.6	50.1%

Note: Original estimate made in February 2014
Actuals May 2017 through April 2018

The original forecasting model was based on: (1) detailed information on every former player; (2) the propensity of former players to contract a compensable disease; (3) the timing of the diagnosis of disease and (4) the propensity of former players to register and file a claim. It was recognized at the time of the original estimate that the weakest assumption was the propensity to file a claim. The propensity depends on the willingness of the players to admit they contracted such disease and the ability of plaintiff lawyers to educate and inform the former players to encourage their involvement, regardless of whether they had yet contracted a disease or not.

Clearly, the effort was successful – far exceeding the participation rate in most class settlements. Table 2 shows the estimated and actual participation rates. The original estimates assumed a 95% participation rate for individuals already filing a claim (and/or represented by counsel) and a 50% participation rate for all other former players. These assumptions yielded an approximately 59% participation rate overall. However, the actual participation rate is approximately 80%. This 33% increase in the participation rate (from 59% to 80%) has a direct increase in the projected total value of the MAF.

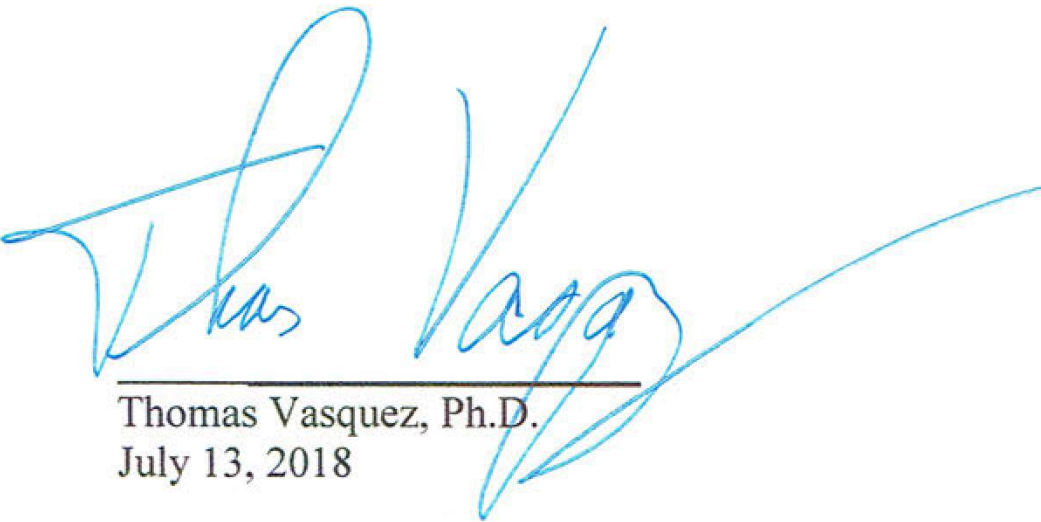
Table 2

Player Registrations as Class Members: Estimated Vs. Actual

Player Categories	Estimated Registrations	Actual Registrations	Actual Less Estimated Registrations	
			Count	Percent
Estimated Registered Players ^a	12,200	17,200	5,000	41.0%
Total Class Members ^b	20,500	21,500	1,000	4.9%
Participation Rate	59%	80%	na	na

a.) Ex. A; Declaration of Orran L. Brown, Sr. ISO Third Joint Status Report on the Implentation of the Settlement Program; Paragraph 5, (excludes Derivative Claimants.)

b.) Players of NFL affiliate leagues were included as eligible class members in my April, 2017 report



Thomas Vasquez, Ph.D.
July 13, 2018

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing document was served electronically via the Court's electronic filing system upon all counsel of record in this matter.

Dated: July 18, 2018

/s/Christopher A. Seeger

Christopher A. Seeger

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Alterra America Insurance Company
v.
National Football League and NFL Properties,
LLC, et al.
Discover Property and Casualty Co., et al.
v.
National Football League, et al.

Present: JEFFREY K. OING
J.S.C.
Justice
IAS
652813/2012
Index No. 652933/2012
DCM Track:

PRELIMINARY CONFERENCE
ORDER
COMMERCIAL DIVISION

APPEARANCES:
Plaintiff(s): Discover Plaintiffs Kevin O'Connor, Hermes Netburn and Thomas Martin, Putney Twombly; Alterra Plaintiffs, LARRY P SCHIFFER, Patton Boes/LP
Defendant(s): Christopher Carroll - TIG, North Rim, USA
DAREN McNALLY (ACE Defs), Michael Kunk - insurance attorneys (Chubb)
JOHN HALL (NFL) Mitchell Dotin (NFL)

It is hereby ORDERED that disclosure shall proceed as follows:

(1) BILL OF PARTICULARS (See CPLR 3130(1)):
(a) Demand for a bill of particulars shall be served by ~~both parties~~ on or before ~~May 10, 2013~~
(b) Bill of particulars shall be served by _____ on or before _____

(2) DOCUMENT PRODUCTION:
(a) Demand for discovery and inspection shall be served by both parties on or before May 10, 2013
(b) Response to demand shall be served by both parties on or before ~~May 31, 2013~~
June 7, 2013

(3) INTERROGATORIES:
(a) Interrogatories shall be served by ~~both parties~~ on or before May 10, 2013
(b) Answers to interrogatories shall be served by both parties on or before ~~May 31, 2013~~
June 7, 2013

(4) DEPOSITION ON ORAL QUESTIONS:

shall be held TBD ☐ Plaintiff(s) ☐ Defendant(s) ☐ All Parties

(5) OTHER DISCLOSURE:

(6) If a motion relating to disclosure has raised additional disclosure issues, the parties shall: _____

(7) IMPLER: Shall be completed on or before TBD.(8) END DATE FOR ALL DISCLOSURE: TBD.(9) COMPLIANCE CONFERENCE: Shall be held on TBD.(10) MOTIONS: Any dispositive motion(s) shall be made on or before TBD.(11) NOTE OF ISSUE: ~~TBD~~ shall file a note of issue/certificate of readiness on or before _____

A copy of this order shall be served and filed with the note of issue.

THE DATES SET FORTH HEREIN MAY NOT BE ADJOURNED EXCEPT WITH APPROVAL OF THE COURT

SO ORDERED:

Dated: 4/12/13
JEFFREY K. OING, J.S.C.**ADDITIONAL DIRECTIVES**

In addition to the directives set forth above, it is further ORDERED as follows:

The parties shall enter into a confidentiality order on or before May 10, 2013~~The non-NFL parties~~ The non-NFL parties will consolidate their demands for document production and interrogatories to the extent possible.The stay on the pleadings is lifted to the extent that the NFL must file an answer on or before April 26, 2013Se 6/28/13 10AM

SO ORDERED:

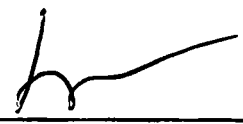
Dated: 4/12/13
JEFFREY K. OING
J.S.C.

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM PART 48

-----X
ALTERRA AMERICA INSURANCE COMPANY,

Index No. 652813/2012

Plaintiff,

-against-

**STIPULATION AND ORDER
FOR THE PRODUCTION
AND EXCHANGE OF
CONFIDENTIAL INFORMATION**

NATIONAL FOOTBALL LEAGUE AND NFL
PROPERTIES LLC, ET AL

Defendants.
-----X

DISCOVER PROPERTY & CASUALTY
COMPANY, ET AL

Index No. 652933/2012

Plaintiffs,

-against-

NATIONAL FOOTBALL LEAGUE, NFL
PROPERTIES LLC, ET AL

Defendants.
-----X

This matter having come before the Court by stipulation of all parties to the above-captioned actions, for the entry of a protective order pursuant to CPLR 3103(a) limiting the review, copying, dissemination, and filing of confidential and/or proprietary documents and information to be produced by any party and their respective counsel or by any non-party in the course of this Litigation (as defined below) to the extent set forth below, and the parties, by, between, and among their respective counsel, having stipulated and agreed to the terms set forth herein, and good cause having been shown;

Alterra Am. Ins. Co. v. National Football League, et al., Index No. 652813/2012

Discover Prop. & Cas. Co., et al. v. National Football League, et al., Index No. 652933/2012

IT IS hereby ORDERED that:

1. The parties consent to this Order to facilitate the production, exchange, and discovery of any type or form of document or information, whether physical or electronic (collectively "Documents") and any written or oral testimony (collectively "Testimony") that any party contends merits confidential treatment.

2. Any party or non-party may designate any Document produced or Testimony given in connection with the above-captioned actions (the "Litigation") as "Confidential" or "Attorneys' Eyes Only Information" by notation on the document, statement on the record of the deposition, written advice to the respective undersigned counsel for the parties hereto, or by other appropriate means under the terms of this Order. Any Document or Testimony may be designated as "Confidential Information" hereunder if the Designating Party (as defined below) believes in good faith that the Document or Testimony contains personal, commercial, or other sensitive information or trade secrets not generally available in the public domain, proprietary business information, competitively sensitive information, or other matter or information the disclosure of which would be detrimental to the conduct of the business or interests of the Designating Party (as defined below), or the business of any of that party's customers or clients or to the privacy interests of one or more individuals, or that, with respect to the National Football League ("NFL") and NFL Properties (collectively, the "NFL Parties"), the disclosure of such information may prejudice its position in now pending or future litigation for which it is seeking or may in the future seek insurance coverage. Any Document or Testimony may be designated as "Attorneys' Eyes Only Information" only if all of the requirements set forth in Paragraph 3(a) are satisfied. Any party designating Documents or Testimony as "Attorneys' Eyes Only Information" shall use its reasonable best efforts to limit any such designation to

Alterra Am. Ins. Co. v. National Football League, et al., Index No. 652813/2012
Discover Prop. & Cas. Co., et al. v. National Football League, et al., Index No. 652933/2012

specific, limited portions of such Documents or Testimony.

3. As used herein:

(a) "Attorneys' Eyes Only Information" is restricted solely to Documents or Testimony for which: (1) the Designating Party (as defined below) believes in good faith contains any matter that meets the requirements for being designated as "Confidential Information"; and (2) such Confidential Information, regardless of when created, directly concerns the soliciting, negotiation, procurement, underwriting, premium calculations or issuance of any insurance coverage subsequent to December 31, 2012. Attorneys' Eyes Only Information includes that portion of any pleading, brief, memorandum, report, or other document or testimony that reproduces, paraphrases, or in any way discloses information or matter specifically designated as "Attorneys' Eyes Only Information."

(b) "Confidential Information" means all Documents or Testimony designated as "Confidential Information," any information or matter contained in those Documents or Testimony and that portion of any pleading, brief, memorandum, report, or other document or testimony that reproduces, paraphrases or in any way discloses information or matter contained in Documents or Testimony designated as "Confidential Information."

(c) "Designating Party" means the party or non-party that designates Documents or Testimony as "Confidential Information" or "Attorneys' Eyes Only Information."

(d) "Producing Party" means the parties to this Litigation and any non-parties producing Confidential Information or Attorneys' Eyes Only Information in connection with depositions, document production, or otherwise, or the party asserting the confidentiality privilege, as the case may be.

Alterra Am. Ins. Co. v. National Football League, et al., Index No. 652813/2012
Discover Prop. & Cas. Co., et al. v. National Football League, et al., Index No. 652933/2012

(e) "Receiving Party" means any person or entity that receives Documents or Testimony designated as "Confidential Information" or "Attorneys' Eyes Only Information."

4. The Receiving Party may, within sixty (60) days of receipt thereof, notify the Designating Party that the Receiving Party does not concur in the designation of a Document or Testimony as Confidential Information or Attorneys' Eyes Only Information by identifying the specific Bates number(s) or otherwise specifically identifying the Document or Testimony at issue. If the Designating Party does not agree to remove the designation of a Document or Testimony, the Receiving Party may move before the Court for an order removing the confidential designation of those Documents or Testimony at issue provided that any such motion is filed within one hundred and fifty (150) days of the receipt of the Documents or Testimony at issue. If no motion is filed, the Documents or Testimony shall continue to be treated as Confidential Information or Attorneys' Eyes Only Information. If a motion to remove the confidential designation is filed, the Documents or Testimony shall be deemed Confidential Information or Attorneys' Eyes Only Information unless and until the Court rules otherwise.

5. Confidential Information and Attorneys' Eyes Only Information shall be used by the Receiving Party and its counsel for purposes of this Litigation only and for no other purposes except that such information may also be used (a) to pursue and obtain reinsurance recoveries in a manner that would preserve its confidentiality as further set forth herein; and/or (b) to comply with any legal obligation of a party to disclose, maintain and preserve certain types of information as further set forth herein. Any person receiving Confidential Information or Attorneys' Eyes Only Information shall not reveal or discuss such information to or with any person not entitled to receive such information under the terms hereof.

Alterra Am. Ins. Co. v. National Football League, et al., Index No. 652813/2012

Discover Prop. & Cas. Co., et al. v. National Football League, et al., Index No. 652933/2012

6. Except with the prior written consent of the Designating Party or by Order of the Court, Confidential Information shall not be furnished, shown, or disclosed to any person or entity except to the following individuals and for the following purposes only:

(a) personnel of the parties, including third-party administrators acting or providing services on behalf of a party involved in the handling of the claims at issue, the Litigation or other proceedings herein, provided that such personnel (i) have been advised of their obligations hereunder, and (ii) are actually engaged in assisting in the preparation of this Litigation for trial or other proceedings herein, are supervising others actually engaged in assisting in the preparation of this Litigation for trial or other proceedings herein, or otherwise need to know such Confidential Information in order to discharge their job responsibilities;

(b) counsel for the parties to this Litigation and their associated attorneys, paralegals, and other professional personnel (including support staff) who are directly assisting such counsel in the preparation of this Litigation for trial or other proceedings herein, are under the supervision or control of such counsel, and who have been advised by such counsel of their obligations hereunder;

(c) expert witnesses or consultants retained by the parties or their counsel to furnish technical or expert services in connection with this Litigation or to give testimony with respect to the subject matter of this Litigation at trial or other proceedings herein, provided, however, that such Confidential Information is furnished, shown, or disclosed in accordance with paragraph 8 hereof;

(d) the Court and court personnel, if filed in accordance with paragraph 13 hereof;

Altterra Am. Ins. Co. v. National Football League, et al., Index No. 652813/2012
Discover Prop. & Cas. Co., et al. v. National Football League, et al., Index No. 652933/2012

(e) an officer before whom a deposition is taken, including stenographic reporters, videographers, and any necessary secretarial, clerical, or other personnel of such officer, if furnished, shown, or disclosed in accordance with paragraph 11 hereof;

(f) trial and deposition witnesses, if furnished, shown, or disclosed in accordance with paragraphs 10 and 11, respectively, hereof;

(g) any party's members, outside accountants or auditors, and regulators or other government agencies requiring access to the Confidential Information;

(h) any party's reinsurers, reinsurance intermediaries and retrocessionaires for the purpose of reinsurance or retrocession contract administration and billings; and

(i) any other person agreed to in writing by the parties.

7. Except with the prior written consent of the Designating Party or by Order of the Court, Attorneys' Eyes Only Information shall not be furnished, shown, or disclosed to any person or entity except to the following individuals and for the following purposes only:

(a) those persons described in any of paragraphs 6(c), 6(d), 6(e), 6(f) and 6(i);

(b) outside counsel who represent the parties, regular and temporary employees and service vendors of such counsel (including outside copying services and outside litigation support services) assisting in the conduct of the Litigation, for use solely for the purposes of the Litigation in accordance with this Order;

(c) in-house lawyers or claims representatives of a Receiving Party who do not advise and will not in the future advise the Receiving Party on current or prospective business dealings with the Designating Party;

(d) any party's reinsurers, reinsurance intermediaries, and retrocessionaires for the purpose of reinsurance or retrocession contract administration and billings.

Alterra Am. Ins. Co. v. National Football League, et al., Index No. 652813/2012
Discover Prop. & Cas. Co., et al. v. National Football League, et al., Index No. 652933/2012

8. Before any disclosure of Confidential Information or Attorneys' Eyes Only Information is made pursuant to paragraph 6(c), counsel for the Receiving Party shall obtain the written agreement, in the form of Exhibit A attached hereto, that any party or person receiving such material shall comply with and be bound by the terms of this Order. To the extent that the person or party receiving such materials is designated as an expert witness in this Litigation, Counsel for the party obtaining the certificate shall supply a copy to counsel for the other parties at the time of the disclosure of the information required to be disclosed by CPLR 3101(d). Before any disclosure of Confidential Information or Attorneys' Eyes Only Information is made pursuant to paragraphs 6(g), 6(h), 6(i) or 7(d), counsel for the Receiving Party shall advise any party or person receiving such material ("Secondary Recipient") of the terms of this Order and use reasonable efforts to obtain the written agreement, in the form of Exhibit A attached hereto, that any Secondary Recipient shall comply with and be bound by the terms of this Order; provided that at a minimum the Receiving Party must advise any Secondary Recipients of the terms of this Order and secure reasonable assurances that the Secondary Recipient to whom disclosure would be made will preserve the confidentiality of such information and use it solely for purposes permitted under this Order, including reinsurance or retrocession-related contract administration or billing.

9. All depositions shall presumptively be treated as Confidential Information and subject to this Order during the deposition and for a period of fifteen (15) days after a transcript of said deposition is actually received by counsel for all parties. At or before the end of such fifteen day period, the deposition shall be classified appropriately. If the deposition is not designated, in whole or in part, as Confidential Information or Attorneys' Eyes Only Information within fifteen days, it will no longer be treated as containing Confidential Information. If a party

Alterra Am. Ins. Co. v. National Football League, et al., Index No. 652813/2012

Discover Prop. & Cas. Co., et al. v. National Football League, et al., Index No. 652933/2012

believes that portions of a deposition comprise Attorneys' Eyes Only Information, counsel shall so indicate on the record at the deposition and specifically identify the portions of the deposition to be treated as Attorneys' Eyes Only Information within five (5) business days of actual receipt of the transcript.

10. Should the need arise for any party or non-party to disclose Confidential Information or Attorneys' Eyes Only Information during any hearing or trial before the Court, including through argument or the presentation of evidence, such party may do so only after taking such steps as the Court, upon motion of the Designating Party, shall deem necessary to preserve the confidentiality of such Confidential Information or Attorneys' Eyes Only Information.

11. This Order shall not preclude counsel for the parties from using during any deposition in this Litigation any Documents or Testimony that have been designated as Confidential Information or Attorneys' Eyes Only Information under the terms hereof. Any stenographer and deposition witness who is given access to Confidential Information or Attorneys' Eyes Only Information shall, prior thereto, be provided with a copy of this Order and agree not to disclose Confidential Information or Attorneys' Eyes Only Information. Such agreement shall be noted on the deposition transcript or video.

12. If a party designates as Confidential Information or Attorneys' Eyes Only Information Documents or Testimony produced by another (such as the designation of Documents produced or Testimony given by a non-party), the Designating Party shall notify all counsel in writing of those Documents or Testimony or portions thereof, that are to be treated as Confidential Information or Attorneys' Eyes Only Information in accordance with this Order within thirty (30) days after actual receipt of the transcript or video.

Alterra Am. Ins. Co. v. National Football League, et al., Index No. 652813/2012
Discover Prop. & Cas. Co., et al. v. National Football League, et al., Index No. 652933/2012

for the Designating Party. All Documents produced or Testimony given by a non-party shall be treated as Confidential Information for a period of thirty (30) days to permit counsel for the parties to determine whether to designate those materials as Confidential Information or whether to forgo any designation. If a party has a good faith reason to believe that the Documents or Testimony produced by another party or a non-party may contain Attorneys' Eyes Only Information, it may provisionally designate such materials as Attorneys' Eyes Only Information for a period of seven (7) days to permit it to review such Documents or Testimony. If the materials are not, within the seven-day period, designated as Attorneys' Eyes Only Information, they shall be treated as Confidential Information for the remainder of the thirty-day period specified above.

13. (a) A Receiving Party who seeks to file with the Court any matter that contains Confidential Information or Attorneys' Eyes Only Information, including for the avoidance of any doubt, any pleading, brief or motion paper, including without limitation any notice or memorandum of law, affidavit or declaration in support of such motion, that attaches, affixes, summarizes, excerpts or in any way discloses Confidential Information or Attorneys' Eyes Only Information, shall provide all other parties with seven (7) days written notice of its intent to file such material with the Court, so that the Designating Party may file by Order to Show Cause a motion to seal such Confidential Information or Attorneys' Eyes Only Information or the Designating Party and Receiving Party may submit a stipulation to the Court seeking to file the Confidential Information or Attorneys' Eyes Only Information under seal. The Confidential Information or Attorneys' Eyes Only Information shall not be filed until the Court renders a decision on the motion to seal or so orders the stipulation. In the event the motion to seal is granted or the stipulation is entered, all documents that are the subject of the

Alterra Am. Ins. Co. v. National Football League, et al., Index No. 652813/2012

Discover Prop. & Cas. Co., et al. v. National Football League, et al., Index No. 652933/2012

order to seal shall be filed in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption of this Litigation, the words "FILED UNDER SEAL -- CONFIDENTIAL MATERIAL SUBJECT TO STIPULATION AND ORDER FOR THE PRODUCTION AND EXCHANGE OF CONFIDENTIAL INFORMATION" as an indication of the nature of the contents, and a statement in substantially the following form: "This envelope, containing documents that are filed in this case by (name of party) and is not to be opened nor are the contents thereof to be displayed or revealed other than to the Court, the parties, and their counsel of record, except by order of the Court or consent of all the parties. Violation hereof may be regarded as contempt of the Court." If the Designating Party does not file a motion to seal or if the Court denies the motion to accept the Confidential Information or Attorneys' Eyes Only Information under seal, the Receiving Party may file the Confidential Information or Attorneys' Eyes Only Information with the Court. If the Court otherwise refuses to accept the Confidential Information or Attorneys' Eyes Only Information, the party shall file the materials pursuant to paragraphs 13(b) or 13(c) below.

(b) As an alternative to the procedures set forth in paragraphs 13(a) or 13(c), any party shall submit to the Court any Documents or Testimony that contains Confidential Information or Attorneys' Eyes Only Information, including for the avoidance of any doubt, any pleading, brief or motion paper, including without limitation any notice or memorandum of law, affidavit or declaration in support of such motion, that attaches, affixes, summarizes, excerpts or in any way discloses Confidential Information or Attorneys' Eyes Only Information, by submitting such Documents or Testimony to the Part Clerk in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption of this Litigation, the words "FILED UNDER SEAL -- CONFIDENTIAL MATERIAL SUBJECT TO STIPULATION AND

Alterra Am. Ins. Co. v. National Football League, et al., Index No. 652813/2012
Discover Prop. & Cas. Co., et al. v. National Football League, et al., Index No. 652933/2012

ORDER FOR THE PRODUCTION AND EXCHANGE OF CONFIDENTIAL INFORMATION” as an indication of the nature of the contents, and a statement in substantially the following form: “This envelope contains documents that are submitted but not to be filed.” Such documents shall be returned by the Part Clerk upon disposition of the motion or other proceeding for which they were submitted.

(c) As an alternative the procedures set forth in paragraphs 13(a) and 13(b), any party wishing to provide the Court with any Documents or Testimony that contains Confidential Information or Attorneys’ Eyes Only Information, including for the avoidance of any doubt, any pleading, brief or motion paper, including without limitation any notice or memorandum of law, affidavit or declaration in support of such motion, that attaches, affixes, summarizes, excerpts or in any way discloses Confidential Information or Attorneys’ Eyes Only Information, shall redact all such Confidential Information or Attorneys’ Eyes Only Information before submitting the papers to the public file. On the appropriate return date, or on any other date ordered by the Court, a fully unredacted copy of the motion papers shall be provided to the Court in Chambers labeled as follows: “SUBMITTED UNDER SEAL – UNREDACTED CHAMBERS COPY – REDACTED COPY FILED PURSUANT TO COURT ORDER.” A fully unredacted copy of the motion papers also shall be provided to each of the parties in this litigation, subject to Paragraph 16, below. After such motion is decided, the Court may, in its discretion, return the “Unredacted Chambers Copy” to the moving party, who will maintain such documents pending the final outcome of the action, including any appeals, after which time the documents shall be disposed of pursuant to this Order.

14. Any matter containing Confidential Information or Attorneys’ Eyes Only Information inadvertently produced without designation as to its confidential nature as provided

Alterra Am. Ins. Co. v. National Football League, et al., Index No. 652813/2012
Discover Prop. & Cas. Co., et al. v. National Football League, et al., Index No. 652933/2012

in paragraphs 2, or 13, or both of this Order, may be so designated by the party asserting the confidentiality privilege by written notice to the undersigned counsel for the Receiving Party identifying the Document or Testimony as Confidential Information or Attorneys' Eyes Only Information within a reasonable time following the discovery that the Document or Testimony has been produced without such designation. If Confidential Information or Attorneys' Eyes Only Information has been inadvertently filed on the public record, upon learning of the inadvertent disclosure, the disclosing party shall immediately contact the Court to obtain the return of the Document(s) or Testimony, and if necessary, take all steps necessary to redress the disclosure and prevent further dissemination of the Confidential Information or Attorneys' Eyes Only Information.

15. The production or disclosure of Confidential Information or Attorneys' Eyes Only Information shall in no way constitute a waiver of any party's right to object to the production or disclosure of other information in this Litigation or in any other action.

16. To facilitate the confidential and secure exchange of information outside of the litigation setting, the NFL Parties have entered or may enter into confidentiality agreements with a number of their insurer(s) governing the provision by the NFL Parties of certain documents and other information to those insurers ("Non-Litigation Confidentiality Agreements"). This Order does not modify, diminish, or supersede, and the parties to such agreements shall continue to comply with, the provisions, restrictions, and protections of those Non-Litigation Confidentiality Agreements, including without limitation the terms in such agreements limiting the permitted uses of such documents and information and the persons or entities to whom such documents and information may or may not be disclosed. The NFL Parties confirm that they will not refuse to produce in this litigation documents or information solely because such documents or

Alterra Am. Ins. Co. v. National Football League, et al., Index No. 652813/2012

Discover Prop. & Cas. Co., et al. v. National Football League, et al., Index No. 652933/2012

information were provided to one or more insurers pursuant to one or more Non-Litigation Confidentiality Agreements, although the NFL Parties reserve the right to object to the production of any such documents or information on any other grounds, including without limitation the attorney-client privilege, work-product doctrine, or any other applicable privilege or protection, as well as the right to object to any argument that such documents or information must be produced by the NFL Parties in this litigation on account of the fact that they were previously provided to one or more insurers pursuant to a Non-Litigation Confidentiality Agreement. The insurer parties to such Non-Litigation Confidentiality Agreements confirm that, before any of them attempts to make use in this litigation of any document or information provided to them pursuant to a Non-Litigation Confidentiality Agreement that has not been produced in this litigation by the NFL Parties, they will first work cooperatively with the NFL Parties to agree on procedures for such use that are consistent with the non-disclosure, non-waiver, use, and any other limitations set forth in the Non-Litigation Confidentiality Agreement and, failing such agreement, will permit the NFL Parties a reasonable opportunity to pursue judicial relief before attempting to use any such document or information.

17. Absent prior written consent of all parties, this Order shall continue to be binding after the conclusion of this Litigation except (a) that there shall be no restriction on Documents that are used as exhibits in Court or Testimony that was given in Court either in person or by deposition (unless such Documents or Testimony were used in a manner designed by the Court to protect their confidential status in accordance with this Order); and (b) that a party may seek the written permission of the Designating Party or further order of the Court with respect to dissolution or modification of this Order with respect to particular Documents or Testimony of the Producing Party.

Alterra Am. Ins. Co. v. National Football League, et al., Index No. 652813/2012

Discover Prop. & Cas. Co., et al. v. National Football League, et al., Index No. 652933/2012

18. Nothing herein shall be deemed to waive any privilege or protection recognized by law, or shall be deemed an admission as to the admissibility in evidence of any facts or Documents or Testimony revealed in the course of this Litigation.

19. The inadvertent disclosure or production of any Document subject to the attorney-client privilege, work product doctrine, or any other privilege or protection ("Privileged Matter") shall not in and of itself waive the privilege or protection nor result in a subject matter waiver of any kind. Upon learning of the inadvertent production of Privileged Matter, the Producing Party must promptly give written notice to all counsel for the other parties that the Document(s) are, in whole or in part, Privileged Matter, were inadvertently produced and state the nature of the privilege. Upon receipt of such notice, all parties who received copies of the Document(s) identified in such notice shall within five (5) business days: (1) return to counsel for the Producing Party all such Documents; or (2) destroy or permanently delete all Documents and copies thereof and certify to counsel for the Producing Party that they have destroyed or permanently deleted all unreturned material. Except to the extent set forth herein: (a) this paragraph does not alter or modify the otherwise applicable requirements for establishing that a Document is subject to a privilege or protection; and (b) returning a Document pursuant to this paragraph does not waive or otherwise alter the right of a party to object to the basis of the privilege asserted or to bring a motion to compel the production of such a Document.

20. Any party or counsel that becomes aware of any actual or threatened disclosure of Confidential Information or Attorneys' Eyes Only Information to parties other than those provided for in paragraphs 6 and 7 above or any use of any Confidential Information or Attorneys' Eyes Only Information for purposes other than those set forth in paragraph 5 above or any other breach of this Order (collectively "Unauthorized Disclosure") shall promptly give

Alterra Am. Ins. Co. v. National Football League, et al., Index No. 652813/2012

Discover Prop. & Cas. Co., et al. v. National Football League, et al., Index No. 652933/2012

notice to the other parties or producing counsel of such circumstances, including where applicable a reasonable description of the circumstances that led to the Unauthorized Disclosure. The party making the Unauthorized Disclosure, or if the Unauthorized Disclosure is made by a non-party, the party that provided the non-party with the Confidential Information or Attorneys' Eyes Only Information, shall immediately make every reasonable effort to prevent or redress the Unauthorized Disclosure and to prevent further Unauthorized Disclosure, and the parties shall cooperate in taking further actions to address the situation.

21. This Order is binding on all parties to this Litigation, including any person or entity that is joined as a party to this action after the entry of this Order. Joined parties shall be provided a copy of this Order within fifteen (15) days of their joinder.

22. Except to the extent prohibited by law or as stated below, within sixty (60) days after the final termination of this Litigation by settlement or exhaustion of all appeals, whichever is later, (the "Final Termination of the Litigation") all parties shall destroy, permanently delete, or return to the Producing or Designating Party all Confidential Information and Attorneys' Eyes Only Information produced or designated and all reproductions thereof. In the event that any party chooses to destroy physical objects, Documents and Testimony, each Receiving Party shall certify in writing within sixty (60) days of the Final Termination of this Litigation that it has undertaken its best efforts to destroy such materials, and that such materials have been destroyed to the best of its knowledge. In the event that any party chooses to permanently delete electronic materials, each Receiving Party shall certify in writing within sixty (60) days of the Final Termination of this Litigation that it has undertaken its best efforts to delete such materials, and that such materials have been deleted to the best of its knowledge. Subject to the next sentence: (a) counsel of record for the parties may retain one copy of documents constituting work product,

Alterra Am. Ins. Co. v. National Football League, et al., Index No. 652813/2012
Discover Prop. & Cas. Co., et al. v. National Football League, et al., Index No. 652933/2012

a copy of pleadings, motion papers, discovery responses, deposition transcripts, and deposition and trial exhibits and (b) each insurer may retain Confidential Information or Attorneys' Eyes Only Information in its records provided that such materials are maintained in a fashion reasonably designed to prevent the use or disclosure of such materials except for the purposes set forth in this Order. To the extent any party or other person entitled to retain Confidential Information or Attorneys' Eyes Only Information does so, such Confidential Information and Attorneys' Eyes Only Information shall remain subject to this Order. This Order shall not be interpreted in a manner that would violate any applicable canons of ethics or codes of professional responsibility. Nothing in this Order shall prohibit or interfere with the ability of counsel for any party, or of experts specially retained for this case, to represent any individual, corporation, or other entity adverse to any party or its affiliate(s) in connection with any other matters.

23. This Order is entered without prejudice to the right of any party to seek relief from, or modification of, this Order or any provisions thereof by properly noticed motion to the Court or to challenge any designation of confidentiality as inappropriate under the Civil Practice Law and Rules or other applicable law. This Order may be changed by further order of this Court, and is without prejudice to the rights of a party to move for relief from any of its provisions, or to seek or agree to different or additional protection for any particular material or information.

24. **THIS STIPULATION** may be signed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

25. **IT IS FURTHER STIPULATED AND AGREED**, that a facsimile or e-mail/PDF copy of this Stipulation and its signature shall be sufficient to bind the signatory.

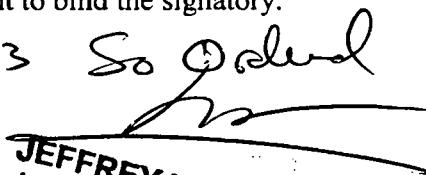
5/22/13 So J. Oling

JEFFREY K. OING
J.S.C.

EXHIBIT D

1

1
2 SUPREME COURT OF THE STATE OF NEW YORK
3 NEW YORK COUNTY - CIVIL TERM - PART 48

4 -----X
5 ALTERRA AMERICA INSURANCE CO.,

6 PLAINTIFF ,

7 -against-

Ind # 652813/12

8 NATIONAL FOOTBALL LEAGUE, ET AL,

9 DEFENDANTS

10 -----X
11 DISCOVER PROPERTY & CASUALTY COMPANY, ET AL,

12 PLAINTIFFS,

13 -against-

Ind # 652933/12

14 NATIONAL FOOTBALL LEAGUE, ET AL,

15 DEFENDANTS.

16 -----X
17 Proceedings 60 Centre Street
18 New York, New York
19 November 16, 2015

20 B E F O R E:

21 HONORABLE JEFFREY OING,
22 Justice

23 A P P E A R A N C E S:

24 CLYDE & CO. US LLP
25 Attorneys for Ace Insurance Co.
26 200 Campus Drive, Suite 300
Florham Park, New Jersey 07392
BY: DAREN S. McNALLY, ESQ.

CARROLL McNULTY KULL LLP
Attorneys for TIG, U.S. First, North River
120 Mountain View Boulevard
Basking Ridge, New Jersey 07920
BY: CHRISTOPHER R. CARROLL, ESQ.

-appearances continued on following page-

AB

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Proceedings

HERMES, NETBURN, O'CONNOR & SPEARING, P.C.
Attorneys for Travelers, Discover
265 Franklin Street, 7th floor
Boston, Massachusetts 02110
BY: KEVIN J. O'CONNOR, ESQ.

COVINGTON & BURLING, LLP
Attorneys for NFL parties
620 Eighth Avenue
New York, New York 10018
BY: JOHN E. HALL, ESQ.
ANASTASIA DANIAS, ESQ.

WHITE AND WILLIAMS LLP
Attorneys for Chubb
457 Haddonfield Road Suite 400
Cherry Hill, New Jersey 08002
BY: MICHAEL O. KASSAK, ESQ.

1 Proceedings

2 THE COURT: The Court has before it the matter of
3 Alterra American Insurance Company versus NFL. The index
4 number is 652813 of 2012. I also have the matter of
5 Discover Property & Casualty versus NFL. The index number
6 is 652933 of 2012.

7 I'm not going to ask for appearances. We have all
8 the appearances for the record, here.

9 I have a letter here dated November 16, 2015, and
10 this is now sort of at a crossroads where we have the class
11 action case in Philadelphia which ostensibly was approved by
12 the District Court, the Judge overseeing that case, and it's
13 on appeal now.

14 MR. HALL: Correct, Your Honor.

15 THE COURT: At this juncture the insurance
16 companies wish to go forward in this DJ action that deals
17 with the coverage issue and the NFL is arguing, or at least
18 is arguing that this matter, or these declaratory judgment
19 actions should be stayed pending final resolution of that
20 class action.

21 So, where are we at, now?

22 Before we get started, I have one question about
23 the NFL, the letter you wrote. What is this indemnity stay
24 that you talked about? I don't understand where -- I
25 thought I stayed -- I didn't issue a specific stay, but
26 indemnity, indemnity deals with if the class action is

Angela Bonello, RPR, Sr. Court Reporter

1 Proceedings

2 approved that you are going to have to make payments as a
3 result of that. I didn't stay those payments, so I don't
4 understand where this indemnity stay comment came from.

5 MR. HALL: What we're referring to with that, Your
6 Honor, is staying the prosecution of this declaratory
7 judgment action. With the exception of what has occurred in
8 this case, some discovery relating solely to insurance
9 issues, but it's really sort of the same discovery that
10 would relate to the underlying claims that's been stayed
11 from the time of the motion to dismiss hearing.

12 THE COURT: Right, but I've never stayed your
13 obligation if that action over -- if the class action is,
14 the settlement is approved or ultimately upheld on appeal,
15 I've never --

16 MR. HALL: Of course not, and I'm sorry if there
17 was any confusion.

18 THE COURT: Big confusion. Did you want to see the
19 question mark I have?

20 MR. HALL: I don't think the U.S. District Judge
21 who is handling this matter would take kindly to any order
22 saying we don't have an obligation once that agreement
23 becomes final and we're all --

24 THE COURT: Nor did I ever issue that, so the record
25 is clear. If there is any dissatisfaction, that should be
26 directed at you guys, not me, because I didn't do that.

Angela Bonello, RPR, Sr. Court Reporter

1 Proceedings

2 MR. HALL: Of course.

3 THE COURT: So that had Federal Judge should know
4 that it wasn't me.

5 So, having said that --

6 MR. HALL: No one wants to mess with a Federal
7 Judge or a State Court judge, Your Honor.

8 THE COURT: Good follow through there, counsel.
9 Every single counsel in this room is like, oh boy, I guess
10 you lost that DJ action.

11 So, let me ask you, why shouldn't I just stay this
12 for -- I mean how much longer is it going to be? Because I
13 think what he's, the sense I got is --have a seat for a
14 second. The sense I got is, look, if that class action gets
15 approved by, upheld by the Third Circuit it's going to lob
16 off a whole bunch of insurance carriers from this DJ action.
17 We're going to have a smaller universe of folks we have to
18 deal with in that regard and discovery is going to be more
19 manageable than going forward the way I have all these
20 insurance carriers --excess, primary, whatever. You know it
21 would be just so much easier if we just waited.

22 So why shouldn't I wait?

23 MR CARROLL: That's not accurate, Your Honor. The
24 case will be the exact same case. This case will be the
25 exact same case after that appeal is filed.

26 And if I could, Your Honor, just to go back a

Angela Bonello, RPR, Sr. Court Reporter

1 Proceedings

2 little bit, Your Honor made reference to the fact this is a
3 2012 case, it's three and a half years old. The last time
4 we were before Your Honor was September of 2013; over two
5 years ago.

6 What has happened in this case, to progress this
7 case in the interim, and Your Honor is right, there is no
8 stay in this case right now. Your Honor did not issue a
9 stay. We're under case management order that was entered in
10 April of 2013, but the parties have decided not to proceed
11 voluntarily, quite frankly. But we're beyond that at this
12 point in time. We're at a point where we need to proceed.

13 So, September of 2013 we were before Your Honor; we
14 had the discussion about a stay. Your Honor didn't enter a
15 stay. We went out of the Courtroom and we proceeded to
16 nowhere in the interim timeframe. In the interim here is
17 what's happening: my clients and my colleague's clients in
18 the interim are paying the defense costs for-- a chunk of
19 the defense costs of the insured in the interim, in excess
20 of millions of dollars. From my perspective --

21 THE COURT: That's where all the excess, all
22 insurance carriers, they're paying something.

23 MR CARROLL: It's going to be defense costs,
24 indemnity costs. All these issues are going to be before
25 Your Honor, all issues before Your Honor once that appeal is
26 finalized. Nothing is going to change in this case. They

Angela Bonello, RPR, Sr. Court Reporter

Proceedings

are simply-- and by the the way, they're not simply saying let's see what happens in that appeal. That appeal is going to be argued, fully briefed, it's going to be argued next week, then there is going to be a decision and then there's potentially going to be another appeal and then there are opt-outs. They made reference to 150 or so opt-outs. They want all of those cases to be resolved. They want Your Honor to stay this case until --pick a date, 2096, whatever timeframe it takes.

THE COURT: I only have ten more years of my term.

MR. O'CONNOR: We are hopeful we can get this case well past you by that point in time, but they want this case stayed indefinitely.

Remember what happened at the last hearing? The NFL doesn't want to be in this Courtroom, they wanted to be in California, and Your Honor kept the case here.

Well, in the interim they have effectively made it that this case is not before Your Honor. We're doing nothing before Your Honor. But you know what's happening in California right now, Judge? The same issues, the same coverage issues are being litigated, litigated full steam ahead, in two DJ actions in the Riddell --

THE COURT: That's the helmet.

MR. O'CONNOR: It is, Your Honor. The very same issues.

Angela Bonello, RPR, Sr. Court Reporter

1 Proceedings

2 Do you know what else; do you know who counsel for
3 Riddell is in that case, Your Honor? Covington, the same
4 counsel as the NFL. So effectively that case is proceeding
5 full pace while we sit here and do nothing in our case and
6 that just is not right, it just can't be.

7 You have sat around for two and a half years.
8 We've done nothing, and we want to proceed. Witnesses are
9 getting older, ages, memories are failing, documents
10 potentially being destroyed, third-party documents. Our
11 clients are being significantly prejudiced on a billion
12 dollar plus case, Your Honor.

13 So to sit here, Your Honor, and say we want to stay
14 it a little bit more, it's just not proper. It's just
15 improper and it's entirely prejudicial to our clients'
16 interests.

17 THE COURT: All right, your response, counsel?

18 MR. HALL: Your Honor, it's proper. It's well
19 settled New York law. The Prashker document, which was
20 discussed extensively the first time we were together, holds
21 that the prosecution of an insurance coverage declaratory
22 judgement action of this sort should ordinarily await
23 resolution of the underlying resolution because you want
24 facts cited that are litigated in the underlying case and
25 you don't want prejudice to the client who is facing
26 discovery demands and litigation from the very insurers who

Proceedings

ought to be protecting them in the underlying action, and that's why the law is very clear; this case ought not to move forward.

And I want to be clear, the request is not some indefinite stay, but we have had two years now, Your Honor, where, with some very difficult negotiation, a historic settlement of a class action was reached and it's been approved by the District Court after two tries. And now, just at this moment -- it's on appeal to the Third Circuit, it's going to be argued on Thursday of this week -- now is precisely not the time to be moving forward with discovery when there's the potential to upset this settlement that was so difficult to achieve, right as it's being considered by the Court of Appeals.

The right thing to do, in our view, Your Honor, is is as we laid out in our letter to the Court this morning, is bring us back in after there is -- as we hope there will be, a final, approved settlement. There is no settlement until all of the appeals are exhausted and cert has been denied. Once that happens, we can work out a schedule and move forward, and in the interim we can meet and confer with the insurers in this case and come to an agreement on the right way to proceed.

THE COURT: Have a seat for a second.

You know, unless I misheard, the insurance carriers

Angela Bonello, RPR, Sr. Court Reporter

1 Proceedings

2 here have indicated that defense costs are being are borne
3 by them with respect to that action over in Philadelphia and
4 the Third Circuit.

5 MR. HALL: May I address that, Your Honor?

6 THE COURT: Yes.

7 MR. HALL: Yes, a portion of our defense costs are
8 being paid, about 60 percent --

9 THE COURT: That's a lot.

10 MR. HALL: --and if that's the issue, Your Honor,
11 if that's the issue -- I'm sorry, I had it flipped. It's
12 about 40 percent, with 60 percent unpaid. But if that's the
13 issue, one of the things we've always been willing to do --
14 that's really a question of law for the Court, under
15 New York's four corners rule, the issue of defense is one
16 that's settled simply by comparing the complaint in the
17 underlying action to the insurance policies, and we can move
18 forward. We could have moved forward at any time during
19 these past two years with a summary judgement motion
20 directed towards defense of the issue on the table, and that
21 is the reason for my poorly worded letter in the indemnity
22 stay.

23 The issue of the discovery that goes to the very
24 same facts and issues that are at play in the underlying
25 action, that's where there is potential for prejudice, risk
26 of upsetting the settlement at this highly sensitive time.

Angela Bonello, RPR, Sr. Court Reporter

1 Proceedings

2 That's what we're asking Your Honor to maintain. But if the
3 issue is defense, if they don't think they have a defense
4 obligation, we're happy to move forward with a summary
5 judgement motion on that immediately.

6 THE COURT: Talking about the underlying facts, the
7 way I look at it, this is a DJ action with respect to
8 whether or not all the insurance carriers are obligated to
9 provide coverage for the underlying claims, here. Those
10 claims have already been --they have been widely recorded in
11 terms of what it is. It's a concussion injury claims, okay.

12 In terms of --it's not as if we're dealing with a
13 car accident or a slip and fall, okay. We're dealing with a
14 set universe of facts with respect to that kind of
15 concussion injury and the claim here is that under the
16 various policies that are at issue, they take the
17 position -- I mean that's their position, I'm not saying
18 it's the right position, but that's their position -- that
19 it's not, it doesn't fall under the coverage provisions of
20 any of the policies.

21 You take a different approach, saying they are
22 covered. So that at the end of the day, what I decide here
23 or how we ultimately decide this case has nothing to do,
24 it's not going to impact the class action, because the class
25 action is already set in stone in the sense that it's
26 already on appeal to the Third Circuit on whether or not for

1 Proceedings

2 them to affirm the District Court Judge's decision to
3 approve the settlement, and I don't see how that's going to
4 impact here when I have to just look at the policy terms,
5 straight up policy terms.

6 And you know, I'm not so sure how much discovery is
7 going to be needed, because as insurance policies go, they
8 are a little bit extensive, but it just requires reading it
9 and saying, does it fall in or out of the coverage, unless
10 I'm missing something.

11 MR. HALL: Your Honor, respectfully, that's not
12 the case.

13 The reason the insurers are here today seeking to
14 get it started is that they want to conduct discovery that
15 goes to the very same factual issues that are at play in the
16 underlying litigation.

17 And I want to remind Your Honor, I mentioned in the
18 letter, this class settlement, though, if it goes through,
19 would be a partial resolution of the plaintiff's claims in
20 this case as there are 150 opt-outs from that class action
21 litigation.

22 Discovery has not proceeded in those cases. The
23 discovery that the insurers would seek here, it's not just
24 about matching up policy language, Your Honor; that's a duty
25 to defend, and as I said, if that's all that was at issue
26 here we can do that on a motion for summary judgement. They

Angela Bonello, RPR, Sr. Court Reporter

Proceedings

1
2 want discovery that goes to the claims that are at issue in
3 the underlying litigation. Did the NFL intentionally seek
4 to harm players? That's the core defense of the insurers
5 and that's the very same scope of discovery that would be at
6 issue in the underlying cases, and that's why New York law
7 counsel don't let the coverage action get ahead of the
8 underlying, because you risk prejudicing the insured and you
9 risk having factual determinations made in a coverage action
10 ahead of the underlying claims, and that's what Prashker
11 says, and that's why Your Honor ruled two years ago we're
12 not going to go forward with that and we haven't in the last
13 two years. And right now, as we're potentially months away
14 from approving, hopefully, this settlement, now is not the
15 time to change gears and jump start discovery. We should
16 maintain the status quo for now. Once that settlement is
17 approved, bring us back in, we meet and confer, we work out
18 a plan going forward.

19 There is going to have to be coordination, Your
20 Honor, with the discovery in those underlying opt-out
21 actions and that's not going to be a simple matter. This is
22 not just about comparing policies. Yes, there's a lot known
23 about this, I would agree with Your Honor, much is public,
24 but the discovery they're seeking is identical to that which
25 the plaintiffs would be after in the underlying cases. They
26 would seek to take depositions of the same people that the

Angela Bonello, RPR, Sr. Court Reporter

Proceedings

plaintiffs would seek to depose in the underlying action.

THE COURT: Are you prepared then, since you're asking for the stay, are you prepared then for a situation that comes up where some of the witnesses, as plaintiff's counsel said, they're not going to remember a lot of stuff -- the more we wait the more there's a danger of losing valuable time in terms of gathering information -- are you prepared for me then, at this point, for this Court to make an assessment against you because of that delay? Because you're the one who is asking for the stay, and if I'm inclined to give you the stay, at the end of the day, be careful what you wish for. You're going to get that kind of assessment from me, because you're the one who is --not dragging your feet, I don't want to use that term, but just the one who's asking, just wait, we need more time. Because at the end of the day he makes a valid point, you know, what are we doing here? Because at the end of the day I need to get these witnesses in line, I got people that I want to ask questions to, you know, some people -- knock on wood, hopefully not --may meet their maker between now and when we get back here and that's a problem for the insurance carriers. At that point he says, see what happened? We waited and this is what we got.

So if I give you the stay, I may just assess against you those kinds of deficiencies or those kinds of

Angela Bonello, RPR, Sr. Court Reporter

Proceedings

failures on the plaintiff's part to gather the information.

Are you prepared for that?

MR. HALL: Your Honor, if there is an issue right now as to that, where there's an indication that there is a witness who would not be available to testify in this action I would invite the insurers to make a motion to that effect. That would be an exception to the stay. I would be happy to respond to a motion like that.

These cases are not getting stale, there is really no prejudice to the insurers. The only thing they're out of pocket on is the defense. I'm happy to address that with a summary judgement motion.

As to indemnity, we haven't paid anything yet. We haven't asked them to pay anything yet. The only prejudice would be to the NFL parties who could have this very delicate, negotiated settlement upset by discovery and litigation if these coverage cases ahead of what the New York Court of Appeals has said.

THE COURT: I hear what you're saying, because ultimately at the end of the day, the settlement of the class action was based on certain --was based on facts that were known to everybody in terms of settling the dollar figure that was thrown about in that NFL case was based on a known set of facts.

If I let you go forward with discovery here, those

Angela Bonello, RPR, Sr. Court Reporter

Proceedings

known set of the facts can be altered substantially, given whatever discovery appeals --whether it helps one side or the other, that changes the dollar figure, because at the end of the day the Third Circuit is going to say I'm not going to approve this because guess what, they're doing discovery now, and lo and behold, the Player's Association, the NFL Player's Association, there is nothing confidential here, got a hold of some sort of deposition and said, look, look at this fact this guy testified to. The dollar figure that we agreed to, forget it.

MR. O'CONNOR: Judge, that's not going to happen and the reason why is because the briefing has been closed.

THE COURT: You know the Federal Court, they can open anything up.

MR. O'CONNOR: But they're arguing it this week.

THE COURT: Let me tell you something, this is a big enough Circuit so that the Third Circuit can cause a pause, so that even if they render a decision on approving the settlement and something else happens along the way, go ahead and tell a Federal Judge they can't tell --

MR. O'CONNOR: You asked Mr. Hall a specific question: Are you prepared to live with the consequences. He didn't answer.

THE COURT: His answer was, go ahead and give me a list of people.

1 Proceedings

2 MR. O'CONNOR: The case that we've done no
3 discovery and know nothing about?

4 It's absurd when you think about it from that--
5 they're foisting the obligation on us. In September of 2013
6 we think, good, we have this underlying settlement term
7 sheet kind of done, we're right there, Your Honor, don't let
8 anything happen to it. Two and a half years later it's,
9 Your Honor, good news, it's been approved. Now it's on
10 appeal, we need a little bit more time. Well, you heard
11 Mr. Hall say, the next one is, good news, it's been
12 finalized on appeal, now we have 150 opt-outs.

13 Judge, they're out of time. At this point in time
14 they're out of time, we need to proceed. We entered into
15 negotiations with the NFL and extensive and very detailed
16 and very restrictive protective order in this case, more
17 restrictive than the protective order the Court usually has.
18 Why? So these concerns don't need to be concerns, so that
19 we could proceed with document discovery and deposition
20 discovery like every other case.

21 If the NFL asks --what the NFL is asking for, every
22 DJ action before Your Honor is stayed, because every DJ
23 action should be stayed under the NFL's analysis. We have
24 protections in place so things shouldn't happen, shouldn't
25 be a concern. And we're entitled, Your Honor, to proceed
26 with this discovery. They're asking us for a billion

Angela Bonello, RPR, Sr. Court Reporter

1 Proceedings

2 dollars plus, Judge. It's three years later.

3 THE COURT: Well, let me ask you this then, are you
4 prepared, if I let discovery go forward and that tanks the
5 deal over in the Third Circuit, there's a huge fall out
6 because of that, are you prepared to deal with the
7 consequences in that regard? Because I'm not going to be
8 happy with that if that happens.

9 Let's just say I buy your argument, we'll go ahead
10 with discovery and then all of a sudden the deal in the
11 Third Circuit is going to say, you know what, we're not
12 going to approve this just yet, we want to see what the
13 discovery happens in the State Court action. Because if
14 that happens, guess what, I'm --

15 MR. O'CONNOR: They're going to make their
16 argument anyway, Your Honor, and we understand that.

17 THE COURT: You don't understand what I'm saying.
18 You go ahead and make the argument, the Third Circuit can
19 say we're going to wait, now.

20 MR. O'CONNOR: And I understand that the NFL is
21 going to make that argument anyway. Look at the insurers,
22 the bat insurers, did they put us in this position? We
23 believe we're entitled to litigate these issues right now.

24 There are two cases out in California where those
25 judges lifted the stays and said, you know what, proceed
26 with your litigation, proceed with the analysis that we're

Proceedings

1
2 talking about, here. The very same issues that Mr. Hall is
3 concerned about being out there in the public, they're out
4 there in the public on the west coast right now, in a case
5 that they're counselling. So talk about unfair, Your Honor.

6 We're asking for the same opportunity, here. We
7 are asking for the opportunity simply to be heard on these
8 issues under a protective order that provides significant
9 protections to the NFL.

10 MR. HALL: Your Honor, what I haven't heard is any
11 mention of the law. And the law in this state from the
12 Court of Appeals, from 60 years ago is that the prosecution
13 of a declaratory judgment action involving insurance should
14 ordinarily await the resolution of the underlying actions.
15 You don't want to be deciding fact issues in a coverage case
16 before they're decided in the underlying litigation.

17 THE COURT: You know what, I got an idea. I don't
18 know any of the involved underlying case in terms of the
19 player action, other than what we've read in the press in
20 terms of the public nature of that, not that I go out and
21 find it. So that you know what, I got a better idea, here.

22 You know who would be the best person to tell me
23 whether or not this case would impact that case; the Federal
24 Judge in Philadelphia. She would have the greatest idea.
25 You know, and I accord much deference to my colleagues on
26 both State side and Federal side.

Angela Bonello, RPR, Sr. Court Reporter

Proceedings

Why don't you do this, why don't you ask the Federal Judge, Judge, can I go ahead or would you want to issue a stay against me and tell me that I can't-- make an application before the Federal Judge: Judge Oing now wants to go ahead with this case, but we don't think it's inappropriate because it's going to impact whatever happens here. She will issue an order and I'll abide by it, and I'm not going to move ahead. That's called punting.

MR. O'CONNOR: We're not a party and they are. It seems highly prejudicial from my perspective, Your Honor.

Let me ask you this, if I could.

THE COURT: If you're going to ask me a question and I don't answer it --

MR. O'CONNOR: It's a suggestion on Your Honor's part because --

THE COURT: You never expected that. I got a lot of tricks in my hat.

MR. O'CONNOR: I would expect that.

THE COURT: I have the Felix the Cat hat back here.

MR. O'CONNOR: Last week we sent the NFL a detailed proposed case manager which took all of the insurers a bit of time to come together on that, and as you can imagine getting everybody on the same page is not an easy task. The response we got was no.

THE COURT: Not surprising.

Angela Bonello, RPR, Sr. Court Reporter

1 Proceedings

2 MR. O'CONNOR: Very surprising. No. And then we
3 got the letter this morning.

4 But, if you looked at that case management work,
5 what it did is had document discovery until March, no
6 depositions, exchanging documents, including third-party
7 discovery. The real concern we have, not documents that
8 they don't have, but documents that third-parties have that
9 could be destroyed or otherwise. They had that. There was
10 nothing else going to be happening other than document
11 discovery through March of next year.

12 March of next year gives us plenty of time, because
13 the appeal is going to be tomorrow or Wednesday or Thursday
14 of this week.

15 At a minimum, why would we not be entitled to go
16 forward with third-party document discovery to get those
17 documents in, cloaked under the protective order without
18 prejudice to anyone? Why would we not be entitled to that
19 at a minimum, Your Honor?

20 THE COURT: He's just looking for documents, no
21 testimony.

22 MR. HALL: Your Honor, we still haven't heard a
23 response on the law on Prashker, but in addition --

24 THE COURT: I mean, just to respond, ultimately I
25 get the final --I correct myself, I don't get the final
26 call. The Appellate Court gets the final call, but you

Proceedings

know --

MR. HALL: But there are reasons why, on the issue of document discovery, discovery has not proceeded in the underlying actions. Those cases have not moved forward to discovery pending the approval of this settlement.

Were we to begin document discovery in this case, in the coverage action, effectively, then the insurers, the primary insurers who owe the obligation of defending the NFL parties in the underlying litigation and must pay for the defense, and of course we all know that document discovery is the largest cost driver in litigation, effectively, then, they're permitted to shift that cost from themselves to the NFL by insisting that the discovery proceed prematurely in the coverage action ahead of the underlying cases. And it doesn't make any sense, and it's contrary to their policy allegations.

There's a way these cases move forward and I understand their point that this has been two years, and I think that reflects just how sensitive and difficult reaching the settlement has been in the underlying action; that's how hard it is. It hasn't happened overnight, but there's a reason why this kind of a case should not get ahead of, and doesn't in the ordinary course, get ahead of the underlying tort litigation.

THE COURT: What about the Riddell case in

Angela Bonello, RPR, Sr. Court Reporter

1 Proceedings

2 California? That's moving ahead.

3 MR. HALL: My understanding is that's just about
4 defense. I'm not aware they're litigating any kind of
5 indemnity action. I was just informed this action, that
6 similar concussion suits involving the NFL there is --

7 MR. O'CONNOR: The NFL is formally stayed by
8 agreement of all parties in that case for other reasons.
9 The indemnity issues are in fact being litigated out in
10 California.

11 If I heard Mr. Hall say his concern is the cost of
12 the -- this is, the cost, the NFL is talking about the cost,
13 here, that is, there's no reason -- that is not a reason,
14 Your Honor.

15 We are asking at a minimum, Judge, to be able to do
16 that which Your Honor asked Mr. Hall if he was prepared to
17 accept, and that is take the consequence of these documents
18 being destroyed, being lost, or whatever. At a minimum,
19 Your Honor, we need to be able to proceed with that today.
20 And understanding, Your Honor, there is a restrictive
21 protective order that we negotiated with them and that they
22 agreed to that is designed to protect exactly what it is
23 they're protecting it from.

24 THE COURT: You know, I heard the arguments here,
25 and -- have a seat, counsel.

26 As much as the arguments on both sides are equally,

Angela Bonello, RPR, Sr. Court Reporter

1 Proceedings

2 equally good in terms of whether or not to stay or whether
3 or not to go forward with this case, this case has been
4 going on for about three years, now, and it's getting to a
5 point where the time has come to really move forward. But
6 having said that, we're also looking now, going into the
7 holiday season, I mean it's already close to, a couple of
8 weeks from Thanksgiving and a month from Christmas, so that
9 the way I look at it, I'm going to split the baby. I'm
10 going to start going forward in January on this case.

11 I'm going to pick a date for everybody to get back
12 here in January. You can bet that starting sometime in
13 mid-January we're going to go full speed ahead. So that on
14 the one hand the NFL got their stay, but it's not a complete
15 stay. On the other hand the NFL got their wish of going
16 forward but not right away.

17 In the interim, like I said earlier, there can be
18 applications made before the Federal Judge.

19 MR. HALL: Judge Anita Brody.

20 THE COURT: There can be applications made before
21 her and this Court has already indicated on this record here
22 it is more than willing to hear what she has to say with
23 respect to the underlying claims, because I'm not interested
24 in upsetting any settlements at all, and if in fact going
25 forward would do that I would not be happy about that.

26 So, Judge Brody can issue whatever order she needs

Angela Bonello, RPR, Sr. Court Reporter

1 Proceedings

2 to issue, and applications can be made before her. If she
3 declines, that's even more --how you call it, a basis to
4 support the plaintiff's application that starting January
5 we're going to go forward in this case.

6 So that under the circumstances that I have heard
7 here today, I'm going to continue this matter, and now I'm
8 going to put down officially a stay of this matter. And I
9 want everybody back here, and I'll write a gray sheet for
10 you folks so that if you need to seek Appellate review you
11 can seek Appellate review immediately.

12 So let's open up the calendars to 2016.

13 All right, Monday January 11th, everyone's calendar
14 look good for that?

15 MR. O'CONNOR: Yes, Your Honor.

16 MR. HALL: Yes, Your Honor.

17 THE COURT: So that I want to see everybody back
18 here at 10 o'clock, Monday, January 11th, and we'll see
19 where we go from there, because expect at that point the
20 case to be revived and it's going to go forward with
21 discovery. That's your expectation on January 11th.

22

23

24 (Transcript continues on following page.)

25

26

Proceedings

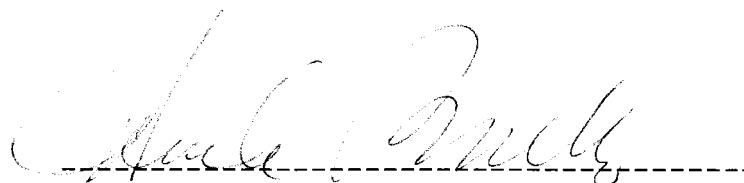
And I will be, either I, depending on how it goes, I or my law clerk will be handling that first discovery order. If you folks can get involved and work out some sort of discovery schedule, by all means do that, but just for the NFL's counsel's edification or at that point you're on notice, we're going forward on January 11th. And if you need to, I already told you what you should do in terms of Judge Brody.

All right, so let me get you an order to that effect so that you will have it. So just hang out. I'm just making two copies, all right.

All right folks, thank you very much.

C E R T I F I C A T E

It is hereby certified that the foregoing is a true and accurate transcript of the proceedings.



ANGELA BONELLO

SENIOR COURT REPORTER

SUPREME COURT-NEW YORK COUNTY

Angela Bonello, RPR, Sr. Court Reporter

EXHIBIT E

1
2 SUPREME COURT OF THE STATE OF NEW YORK
3 NEW YORK COUNTY - CIVIL TERM - PART 48

4 -----X
5 ALTERRA AMERICA INSURANCE CO.,

6 PLAINTIFF ,

7 -against-

8 NATIONAL FOOTBALL LEAGUE, et al,

9 DEFENDANTS

10 -----X
11 DISCOVERY PROPERTY & CASUALTY CO., et al,

12 PLAINTIFFS,

13 -against-

14 NATIONAL FOOTBALL LEAGUE, et al,

15 DEFENDANTS/COUNTERCLAIMANTS

16 -----X
17 Index No. 652813/12 60 Centre Street
18 Proceedings New York, New York
19 April 29, 2016

20 B E F O R E:

21 HONORABLE JEFFREY OING,
22 Justice

23 A P P E A R A N C E S:

24 HERMES NETBURN
25 Attorneys for Travelers Insurance
26 265 Franklin Street, 7th floor
Boston, MA. 02110
BY: KEVIN J. O'CONNOR, ESQ.

CLYDE & CO US LLP
Attorneys for Chubb
200 Campus Drive, Suite 300
Florham Park, New Jersey 07932
BY: DAREN S. McNALLY, ESQ.

-continued on following page-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Proceedings

CARROLL McNULTY KULL LLC
Attorneys for US Fire
120 Mountain View Boulevard
Basking Ridge, New Jersey 07920
BY: CHRISTOPHER R. CARROLL, ESQ.

JACKSON & CAMPBELL
Attorneys for Defendants
1120 Twentieth Street N.W.
South Tower
Washington, D.C. 20036
BY: WARREN LUTZ, ESQ.

COVINGTON & BURLING LLP
Attorneys for National Football League
620 Eighth Avenue
New York, New York 10018
BY: JOHN HALL, ESQ.
MITCHELL F. DOLIN, ESQ.
MICHAEL LECHLITER, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Proceedings

THE COURT: The Court has before it the the matter of Alterra America Insurance Company versus National Football League, et al. The index number 652813 of 2012. This is a status conference with respect to some recent events.

I know that this case has been stayed pending the resolution of the settlement that's happening over in the Federal Court over in Pennsylvania; it's now before the Third Circuit. We'll skip all the appearances since there's already appearances. We'll note that for the record.

So, I got your letter. Tell me now, it's essentially, you wanted to continue the stay; correct?

MR. HALL: Yes, Your Honor. The Third Circuit's affirmance of Judge Brody's approval is a welcome development, but it doesn't end the litigation.

As you're aware there was a petition for rehearing on bond that was filed yesterday. The settlement is not going to be final until all the appeals are exhausted, but even more importantly, Your Honor, as we advised you last Fall when we were last before you, there are 150 opt-outs.

THE COURT: I know that's the concern. The concern is that you think that whatever is going to happen in the 150 opt-outs are going to somehow put you in a precarious position later on should they decide to file their own negligence actions against you.

1 Proceedings

2 MR. HALL: Many of them have already filed those
3 negligence actions, Your Honor. Many of the opt-outs are
4 plaintiffs who have active pending cases.

5 THE COURT: Right. Well, what's the statute of
6 limitations? Is there a period of time when they're going
7 to be time-barred? How many are left that are not filed? I
8 mean --

9 MR. HALL: 104 have not -- 104 have, I apologize,
10 Your Honor.

11 THE COURT: So we're looking at 46 have not. Is
12 there a statute of limitations issues for those days?

13 MR. HALL: During --

14 THE COURT: I don't know who to look at, it's like
15 I'm playing footfall.

16 MR. HALL: During the pendency of this action, the
17 class action has tolled the running of the statute of
18 limitations. There are statute of limitation defenses that
19 were applied to all of these cases; that is one of the
20 things to be litigated in the underlying cases.

21 MR. CARROLL: We said it already in November.

22 THE COURT: I'll make it short for you. You're
23 saying, come on already, enough. We have to get going.

24 MR. CARROLL: I'm going to say what Your Honor
25 said and I'm going to start going forward on January.

26 THE COURT: What year?

1 Proceedings

2 MR. CARROLL: Actually you clarified that, because
3 Your Honor knew that this was going to be an issue. We're
4 going full speed ahead.

5 THE COURT: Because I can push this off to 2024
6 where I'm not on the bench anymore.

7 MR. CARROLL: We're going to be here in 2076
8 having this conference, and Your Honor said you have ten
9 more years on the bench and I said, Your Honor, this can't
10 happen.

11 THE COURT: Knock on wood.

12 MR. CARROLL: So we need to go forward, this could
13 not continue. We need to go forward, Your Honor, and I can
14 give you chapter and verse of why, because it's clear, it
15 has to go forward, it has to start today.

16 THE COURT: You know, I've been extremely patient
17 with this case and I've given you all the stays that you've
18 asked for, but I think there comes a time when you need to
19 go forward. The concern you have about the 150 opt-outs in
20 terms of the documents that may be produced or that will be
21 produced in this case is something that you're concerned
22 about saying, you know, they're going to be able to get
23 access. My simple answer to that, it would be just to enter
24 a confidentiality agreement where those documents, don't
25 upload them, they're redacted for all purposes and that --

26 MR. CARROLL: We have, Your Honor. It's already

1 Proceedings

2 in place.

3 THE COURT: And that further, so that there can't
4 be any arguments from the plaintiffs, is that there are so
5 many, I'll put it on the record, if they want to have access
6 to it they're going to have to come to me and ask for access
7 and then I'll go through the whole argument, we'll see
8 whether those documents should be produced or should not be
9 produced. So that's sort of the remedy towards whether or
10 not your concerns about documents being produced.

11 You know, I don't think it's something that's
12 insurmountable, but I think it's at a time when we have to
13 go forward.

14 MR. HALL: Your Honor, may I be heard?

15 THE COURT: Sure.

16 MR. HALL: First, we're not just talking about
17 documents, we're talking also about depositions. The
18 insurers have made it very clear that they're seeking
19 unfettered discovery.

20 THE COURT: Those can be sealed, too. I can seal
21 those too, and when the plaintiffs want to see them they're
22 going to have to come before me and they're going to have to
23 make their arguments as to why they want those documents and
24 why this should be produced to them. And I'll hear the
25 arguments from the NFL as to why not and at the end of the
26 day they either get it or don't get it.

Angela Bonello, RPR, Sr. Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Proceedings

I understand how your position is, why are we giving them a head start in their litigation when we're talking about insurance policies. I'm not totally oblivious to that point, I understand that.

So that you know, what's going to happen here is going to happen and I don't know what's going to happen in terms of the discovery, I don't know in terms of what's going to be said. But anything that's going to be produced in this case, here, I'm not concerned about it automatically being turned over. I will make sure that's not the case. I don't think the plaintiffs had a problem with that, saying at least there's a checkpoint, if any of the other defendants are going to say, oh, no, that's not a good thing. I think everybody is going to be pretty much on board saying, you know what, we'll let the Judge decide whether or not it should be turned over or not. However that doesn't mean if you guys accidentally turn it over, that's it, that's your issue at that point. So that's my response to you.

MR. HALL: Your Honor, it's true, protective orders get lifted from time to time. I understand your point about that, you would be directly involved in seeking to protect this information, but the issue is not just about a protective order, it's about who's going to be making decisions about the scope of discovery. There're going to

1 Proceedings

2 be real issues in discovery.

3 THE COURT: That would be me, I guess.

4 MR. HALL: There will -- and respectfully, Your
5 Honor, we think those decisions ought to be made by
6 Judge Brody in the first instance, she's invested an
7 enormous time in this case.

8 THE COURT: Listen, I've had a conversation with
9 Judge Brody, I respect her dearly; that was not one of the
10 issues that came up, so that I can say that for the record.

11 So the answer to your question is that I can't
12 have, every time there's a case that's being commenced here
13 and there that I have to defer to the other side. I mean, I
14 know I'm a State Court Judge, but I think I still have
15 enough powers on the State side to go forward with the State
16 case. And I think Judge Brody -- I would doubt that she
17 would want to start taking on more work than she already has
18 just to oversee a declaratory judgment action in this case,
19 here. So, I'm not buying that argument.

20 MR. HALL: Your Honor, I would encourage you to
21 speak with her again more recently. I know that, or at
22 least I understand that you communicated back in January
23 before the time of, you know, the earlier scheduled
24 conference. But I would very much encourage you, before you
25 enter any kind of order with respect to discovery to speak
26 to her again, because I do believe that she wishes to have

Proceedings

as the NDL Judge supervising these, as control over the the pace and timing of discovery. And there are going to be really important issues that are decided with respect to the scope of discovery that will have impact on the underlying tort litigation, Your Honor, and that's all we're asking, is that that discovery take place in the first instance in the NDL, we're producing it expediently to the insurers in the underlying case and we'll coordinate depositions. There's no real prejudice against the-- real and tangible prejudice to the NFL parties to moving forward with discovery ahead of NDL.

MR. CARROLL: Your Honor, I'm before you, I'm not before Judge Brody. Your Honor dictates how this case is managed. We have been here for four years and we've done nothing. They want a billion dollars from our clients, we are entitled to this discovery.

THE COURT: Plus interest.

MR. CARROLL: Well, we can talk about that. But, Judge, Judge Brody is not here and, respectfully, this is your case not her case and we need Your Honor to manage it, not to move it to Federal Court.

THE COURT: I've been reminded many times, I know it's my case.

MR. HALL: Your Honor, this is a declaratory judgment action. We haven't asked them to pay any portion

Proceedings

of that settlement, we haven't paid anything on the settlement. The settlement itself is not final. And even once it becomes final they're not going to be required to pay anything until an order and a judgement from Your Honor that disposes of their defenses. There is no prejudice to them with respect to indemnity for the sum, that's why the only thing you've heard is we're out of pocket because we're spending money to reimburse the League for a portion of its defense costs in the underlying action.

And as we pointed out in a letter to Your Honor, that's not going to be aided by any fact discovery, that's entirely a legal question based upon a comparison of the claims in the underlying actions to their policies.

THE COURT: Mr. Hall -- it's Mr. Hall; correct?

MR. HALL: Yes.

THE COURT: I'm not not hearing you. I hear you loud and clear, but at the end of the day my answer still has not changed right now, and that is I am going forward with this case. I will issue whatever discovery orders I believe need to be issued. If you disagree you can seek Appellate review here, in the First Department. I've been reversed many times, that's okay, I have been reversed. That is your remedy at this point in time. You have now a record where I'm not going to wait anymore. Once that first discovery order is issued and you believe it's going to

Proceedings

conflict with the case in the NDL over in the Third Circuit you can make that argument, because you haven't waived it, it's here in the record, before the First Department with respect to the first discovery order and the First Department will either give you a stay that you're looking for or say go ahead, do discovery. So that's my answer to you right now. I'm not going to -- I have enough problems with my Appellate Court and following what they tell me to do, I don't need to really start confusing or making things a little more confusing by looking at the Federal Court system and how they're handling things. This is my case, it's a case in State Court, it's not been removed to Federal Court. So that's where we're at.

So the first discovery issue order I issue, I'm not shy of signing orders, I will sign it, you will get the order, you can take that up on appeal and say, look, the Judge is wrong, I think this case should be stayed. I think this discovery order, now that you see the discovery order in front of you, you can make that argument to the Appellate Court, it all conflicts with everything going on in the NDL, it hampers our ability to prosecute or settle and I ask you to reverse and ask you for a stay. Look, at that point the Appellate Court says-- it's out of my hands, it's not me stopping that, we're going forward with that.

So that's you're remedy that I will get you once we

Angela Bonello, RPR, Sr. Court Reporter

1 Proceedings

2 get that first discovery order down. You got the record
3 here, you have these arguments, you make your pitch uptown,
4 okay. That's the way we're going.

5 MR. HALL: Your Honor, if that's your order, the one
6 thing I would ask is that we postpone any depositions until
7 the completion of document discovery. I think Your Honor
8 yourself recognized it's one thing to produce documents
9 pursuant to a protective order, it's another thing to take
10 depositions of core witnesses for the plaintiffs' case in
11 the first instance by insurers who are adverse to us. And I
12 would ask, if this is to be Your Honor's order on moving
13 forward with discovery, that we not have any depositions
14 scheduled until the completion of document discovery.

15 THE COURT: What's your response?

16 MR. CARROLL: Your Honor, that means they're going
17 to delay document discovery until 2076. We are entitled to
18 litigate this case in the manner we want to litigate. Would
19 we want documents first? Certainly.

20 THE COURT: Because otherwise you're going to waste
21 your time.

22 MR. CARROLL: We understand how to litigate our
23 own case and we appreciate the NFL, how they want to
24 litigate.

25 THE COURT: There's enough lawyers in here to help
26 you out.

1 Proceedings

2 MR. CARROLL: There are witnesses who are older,
3 there are third parties that we need to get access to. We
4 can't have our hands tied anymore.

5 THE COURT: Well, third parties, those are
6 nonparties, there is no restriction on what you want to do
7 with those folks.

8 MR. CARROLL: And that's fine, Your Honor, as long
9 as we can proceed as we need to proceed against nonparties
10 that's fantastic.

11 THE COURT: Nonparties in my mind, that's open,
12 it's up to the them whether or not they want to produce them
13 for discovery and that is another argument I have to hear
14 later on.

15 MR. HALL: Your Honor, under their proposed order
16 they have a period for document discovery through
17 essentially the end of the calendar year, and all I'm saying
18 is let's not have any depositions taken by these insurer
19 counsel who are adverse to the NFL until the end of that
20 period. That provides time; one, for the settlement to be
21 finalized and; two, for, as you say, the logical process to
22 be conducted of an exchange of documents and then we'll
23 commence deposition discovery.

24 THE COURT: You know, that's well and fine that you
25 make that pitch. At the end of the day, I've sat on this
26 side and on that side just a little bit of time to know that

1 Proceedings

2 how litigation goes and how strategy goes; it's ebb and
3 flow. I can't give you a -- in a sense, I'm not here to
4 hamper or at least box litigators and trial counsel into a
5 specific area in terms of how to prepare their case. It
6 flows, it flows, and at times if they decide to do a notice
7 of deposition, you can always make an application to me
8 saying, well, we don't want this, we want a protective order
9 or either we want to delay the deposition for whatever
10 reasons.

11 I haven't seen -- we haven't even heard the start
12 gun go off yet and you're asking already all these kinds of
13 conditions to put in. I don't like putting in conditions
14 for discovery, that's not what Article 31 calls for.

15 And at this point in time, I don't think you've
16 served notice of depositions yet, have you?

17 MR. CARROLL: No.

18 THE COURT: So, I don't know when they're going to
19 do that, so for me to tell them you can't do that until
20 January 1, 2017, they're going to go, that doesn't make
21 sense because they can do document discovery and they can
22 complete it, I don't know, in two months. Who knows, they
23 may say we have everything we need, we're ready to go. And
24 at that point if they notice a deposition, you can come in
25 and argue, you know, Judge, we can't do this deposition for
26 X, Y and Z. I'll listen and see where it goes, but to put

1 Proceedings

2 conditions on right now before even the first paper gets
3 exchanged, that's not my style, I don't do that. I don't
4 like doing that and that's not something that I was taught
5 on that side. No, that doesn't work.

6 So, the answer is no. No papers have been
7 exchanged yet. Do we even have a discovery schedule set
8 yet?

9 MR. CARROLL: We did, except it was stayed.

10 THE COURT: You have to change the dates now.

11 MR. CARROLL: Right, we submitted a draft for Your
12 Honor's consideration.

13 THE COURT: Today?

14 MR. CARROLL: It was in a letter that I sent
15 yesterday, Your Honor.

16 THE COURT: Did you send it by hard copy or by --

17 THE COURT CLERK: I have it, Judge.

18 (Hanging.)

19 THE COURT: I only got your letter. Do you have a
20 proposed order?

21 MR. CARROLL: There should be a proposed order
22 with it, and we can hand it up.

23 MR. HALL: Your Honor, we also submitted a
24 proposed case management offer that reflected our view of
25 the case. In light of Your Honor's ruling today, what I
26 would suggest is give us two weeks to try to negotiate dates

1 Proceedings

2 consistent with Your Honor's order today and to reach
3 agreement on the issues now that we know the way you're
4 leaning, and we can come back and --

5 THE COURT: I'll buy that since what I said today
6 may have changed the game in the sense, in terms of how to
7 go forward, because this was all new to you what I was going
8 to say today. I think it would be worthwhile that all trial
9 counsel get together and start hammering out a discovery
10 schedule that would be sort of okay with both sides and if
11 any issues come up, I can always resolve it. But I think
12 that's a at least, at a minimum, what I would want you folks
13 to do now that you know that I am not staying this case, I'm
14 not putting any conditions on discovery. You guys can
15 hammer out your timetable and try to figure that out.

16 First things first is, of course, document
17 discovery, and then you can always reserve your timetable in
18 terms of when you want to do the the EBTs in that kind of
19 joint discovery order.

20 MR. CARROLL: We're prepared to start, actually
21 start after this conference, Your Honor, to work with them.
22 I would suggest, Judge, if we can't reach agreement within a
23 two week period that we both have the opportunity to submit
24 proposed orders to Your Honor.

25 THE COURT: That would be a good idea. So why don't
26 we look at it this way, today is the last day of April,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Proceedings

April 29th. Let's see, I would say May 13th you should be able to arrive at some sort of schedule.

MR. CARROLL: Agreed, Your Honor.

THE COURT: So why don't we set May 13th as the date to work out some type of schedule and if you can't do that, rather than having letters going back and forth I would want you all back in here, it's easier that way. I hate to do that to you folks, but I think the case --I can't talk on the phone with all you guys. So why don't we look at -- so May 16, that Monday, come on back at ten o'clock if you haven't arrived at some sort of discovery schedule. May 16th, which is a Monday, ten o'clock. We'll get you in and out and we'll figure that out.

MR. CARROLL: Your Honor, are there any other days that week that work for Your Honor?

(Transcript continued on following page.)

Proceedings

THE COURT: Why?

MR. CARROLL: I'm good but I want to --

THE COURT: Well, what's your date?

MR. McNALLY: The 19th or 20th, Your Honor.

THE COURT: The 20th, May 20th, is Friday,
10 o'clock, everybody; everybody okay?

MR. HALL: That would work, Your Honor, thank you.

THE COURT: Hopefully I may not have to see you on
May 20th, but if you can't resolve it come back on May 20th
and we'll resolve this.

C E R T I F I C A T E

It is hereby certified that the foregoing is a true and accurate
transcript of the proceedings.

ANGELA BONELLO

SENIOR COURT REPORTER

SUPREME COURT-NEW YORK COUNTY

Angela Bonello, RPR, Sr. Court Reporter

EXHIBIT F

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: JEFFREY K. OING
J.S.C.
Justice

PART 48

Index Number : 652813/2012
ALTERRA AMERICA INSURANCE
vs.
NATIONAL FOOTBALL LEAGUE
SEQUENCE NUMBER : 017
STAY PROCEEDINGS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____
Answering Affidavits — Exhibits _____ No(s). _____
Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is

*Mtn is decided in accordance w/ the accompanying
Memorandum decision/order of this court.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 10/28/16

JEFFREY K. OING J.S.C.
J.S.C.

1. CHECK ONE: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☒ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL PART 48

-----x
ALTERRA AMERICA INSURANCE COMPANY,

Plaintiff,

-against-

NATIONAL FOOTBALL LEAGUE, NFL
PROPERTIES, LLC, TIG INSURANCE COMPANY,
CENTURY INDEMNITY COMPANY, CHARTIS
PROPERTY CASUALTY COMPANY, DISCOVER
PROPERTY & CASUALTY INSURANCE COMPANY,
FEDERAL INSURANCE COMPANY, GREAT
NORTHERN INSURANCE COMPANY, GUARANTEE
INSURANCE COMPANY, HARTFORD ACCIDENT
& INDEMNITY COMPANY, NORTH RIVER
INSURANCE COMPANY, ONE BEACON AMERICA
INSURANCE COMPANY, UNITED STATES FIRE
INSURANCE COMPANY, ACE AMERICAN
INSURANCE COMPANY, ILLINOIS UNION
INSURANCE COMPANY, ALLSTATE INSURANCE
COMPANY, ARROWOOD INDEMNITY COMPANY,
CHARTIS SPECIALTY INSURANCE COMPANY,
CONTINENTAL CASUALTY COMPANY,
CONTINENTAL INSURANCE COMPANY,
ILLINOIS NATIONAL INSURANCE COMPANY,
INDEMNITY INSURANCE COMPANY OF NORTH
AMERICA, NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA, MUNICH
REINSURANCE AMERICA, INC., NEW ENGLAND
REINSURANCE CORPORATION, ST. PAUL
PROTECTIVE INSURANCE COMPANY,
TRAVELERS CASUALTY & SURETY COMPANY,
TRAVELERS INDEMNITY COMPANY, TRAVELERS
PROPERTY CASUALTY COMPANY OF AMERICA,
VIGILANT INSURANCE COMPANY, WESTCHESTER
FIRE INSURANCE COMPANY, XL INSURANCE
AMERICA, INC. and COMPANIES ABC-XYZ,
inclusive,

Defendants.
-----x

Index No.: 652813/2012

Mtn Seq. No. 017

DECISION AND ORDER

DISCOVER PROPERTY & CASUALTY COMPANY,
ST. PAUL PROTECTIVE INSURANCE COMPANY,
TRAVELERS CASUALTY & SURETY COMPANY,

Index No. 652813/2012

Mtn Seq. No. 017

Page 2 of 15

Index No. 652933/2012

Mtn Seq. No. 013

TRAVELERS INDEMNITY COMPANY AND
TRAVELERS PROPERTY CASUALTY COMPANY
OF AMERICA,

Plaintiffs,

-against-

NATIONAL FOOTBALL LEAGUE, NFL
PROPERTIES, LLC, ALTERRA AMERICA
INSURANCE COMPANY, FIREMAN'S FUND
INSURANCE COMPANY, TIG INSURANCE
COMPANY, CENTURY INDEMNITY COMPANY,
FEDERAL INSURANCE COMPANY, GREAT
NORTHERN INSURANCE COMPANY, GUARANTEE
INSURANCE COMPANY, HARTFORD ACCIDENT
& INDEMNITY COMPANY, NORTH RIVER
INSURANCE COMPANY, U.S. FIRE INSURANCE
COMPANY, ACE AMERICAN INSURANCE COMPANY,
ILLINOIS UNION INSURANCE COMPANY,
ALLSTATE INSURANCE COMPANY, AMERICAN
GUARANTEE AND LIABILITY INSURANCE
COMPANY, ARROWOOD INDEMNITY, COMPANY,
CHARTIS SPECIALTY INSURANCE COMPANY,
CHARTIS PROPERTY CASUALTY COMPANY,
CONTINENTAL CASUALTY COMPANY,
CONTINENTAL INSURANCE COMPANY,
ILLINOIS NATIONAL INSURANCE COMPANY,
MUNICH REINSURANCE AMERICA, INC.,
NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA, NEW
ENGLAND REINSURANCE CORPORATION,
ONE BEACON AMERICA INSURANCE COMPANY,
VIGILANT INSURANCE COMPANY,
WESTCHESTER FIRE INSURANCE COMPANY,
XL INSURANCE AMERICA, INC., DOE
DEFENDANTS 1-100,

Defendants.

Index No. 652933/2012

Mtn Seq. No. 013

DECISION AND ORDER

-----x

Index No. 652813/2012
Mtn Seq. No. 017

Page 3 of 15

Index No. 652933/2012
Mtn Seq. No. 013

JEFFREY K. OING, J.:

The Underlying Dispute

These two consolidated insurance coverage disputes arise out of an underlying action, In Re National Football League Players' Concussion Injury Litigation, MDL 2323, venued in the United States District Court for the Eastern District of Pennsylvania before Judge Anita B. Brody (the "MDL Action"). The MDL Action includes numerous lawsuits commenced by former National Football League players and their families alleging certain neurological injuries and conditions as a result of concussive and subconcussive impacts the former players sustained during their NFL careers.

Judge Brody granted final approval of a class settlement, the amount of which is estimated to be in the range of \$1 billion, on May 8, 2015 (the "class settlement"). Certain objectors to the settlement appealed, and on April 18, 2016 a three-judge panel of the Third Circuit of the United States Court of Appeals affirmed Judge Brody's decision. The Third Circuit denied the objectors' petition for rehearing en banc. The objectors then filed a petition seeking review from the United States Supreme Court. A decision on the petition is pending.

Index No. 652813/2012
Mtn Seq. No. 017

Page 4 of 15

Index No. 652933/2012
Mtn Seq. No. 013

In addition, more than 150 players opted out of the class settlement (the "opt-out litigation"). The record demonstrates that no discovery has taken place in the opt-out litigation, and that Judge Brody will decide how to proceed with that discovery at the appropriate time. The MDL Action is comprised of the class settlement and the opt-out litigation.

The Declaratory Judgment Actions

Plaintiff insurers, Alterra America Insurance Company and Discover Property & Casualty Company ("insurers"), commenced these declaratory judgment actions against their insured, National Football League and NFL Properties, LLC (collectively, the "NFL entities"), and other insurance companies that insured the NFL entities, to seek a judicial determination of their and the other named insurers' coverage obligations to the NFL entities arising out MDL Action (the "consolidated actions").

Procedural History

Plaintiff insurers commenced these consolidated actions in August 2012. On March 15, 2013, I denied the NFL entities motions to dismiss the consolidated actions.¹ With respect to

¹I granted that branch of the motion to dismiss the Alterra plaintiffs' first cause of action (duty to defend), third cause of action (duty to cooperate) and fourth cause of action (other insurers duty), and dismissed those claims without prejudice

Index No. 652813/2012
Mtn Seq. No. 017

Page 5 of 15

Index No. 652933/2012
Mtn Seq. No. 013

the indemnification-related claim, I stayed prosecution of that claim pending resolution of the MDL Action because of discovery-related concerns that may prejudice the NFL entities (Tr., NYSCEF Doc. No. 290 [Index No. 652813/2012] at pp. 27-48). The parties engaged in limited discovery, mostly pertaining to production of insurance policies and publicly-available pleadings from the MDL Action. The parties appeared for a status conference on September 13, 2013. The NFL entities successfully prevailed in convincing me to adjourn the matter to November 16, 2015, which happened to be the date after the class settlement was finalized.

At the November 16, 2015 status conference, plaintiff insurers sought to move forward with discovery in the consolidated actions. Over the NFL entities objections, I concluded that "the time has come to really move forward" with this case (Tr., NYSCEF Doc. No. 347 [Index No. 652813/2012] at p. 24). Given the approaching holiday season, I instructed counsel to return for a status conference on January 11, 2016, at which time counsel should expect to proceed "full speed ahead" with discovery (Id.). Given the complexity of these consolidated actions and their inevitable cross-over with the class settlement

(Tr., NYSCEF Doc. No. 290 [Index No. 652813/2012] at pp. 27, 51, 53).

Index No. 652813/2012
Mtn Seq. No. 017

Page 6 of 15

Index No. 652933/2012
Mtn Seq. No. 013

and the opt-out litigation, I conferred with Judge Brody. Subsequent thereto, I adjourned this matter twice to April 29, 2016. In the interim, the United States Court of Appeals for the Third Circuit affirmed Judge Brody's approval of the class settlement.

At the April 29, 2016 conference, I made clear that I have "been extremely patient with this case and ... given [the NFL] all the stays that [it] asked for ... there comes a time when you need to go forward" (Tr., NYSCEF Doc. No. 378 [652813/2012] at pp. 5-6). I rejected the NFL entities' concerns that discovery in these consolidated actions jeopardizes their defense in the MDL Action, particularly the opt-out litigation:

THE COURT: . . . The concern you have about the 150 opt-outs in terms of the documents that may be produced or that will be produced in this case is something that you're concerned about ... [that the MDL Action plaintiffs will] be able to get access. My simple answer to that, it would be just to enter a confidentiality agreement

MR. CARROLL: We have, Your Honor. It's already in place.

THE COURT: And that further, so that there can't be any arguments from the plaintiffs ... if [the MDL Action plaintiffs] want to have access to it they're going to have to come to me and ask for access and then I'll go through the whole argument, we'll see whether those documents should be produced or should not be produced. So that's sort of the remedy towards whether or not your concerns about documents being produced.

Index No. 652813/2012
Mtn Seq. No. 017

Page 7 of 15

Index No. 652933/2012
Mtn Seq. No. 013

... I don't think it's something that's insurmountable, but I think it's at a time when we have to go forward.

(Id.). Having heard the NFL entities' additional arguments to stay this matter, one being that I should consider deferring to Judge Brody issues concerning discovery in the first instance, I ended the discussion with the following commentary to the NFL entities' counsel:

THE COURT: ... I hear you loud and clear, but at the end of the day my answer still has not changed right now, and that is I am going forward with this case. I will issue whatever discovery orders I believe need to be issued. If you disagree you can seek Appellate review here, in the First Department'. ... That is your remedy at this point in time. You have now a record where I'm not going to wait anymore. Once that first discovery order is issued and you believe it's going to conflict with the case in the MDL over in the Third Circuit you can make that argument, because you haven't waived it, it's here in the record, before the First Department with respect to the first discovery order and the First Department will either give you a stay that you're looking for or say go ahead, do discovery. So that's my answer to you right now.

(Id. at pp. 10-12). These motions ensued.

Relief Sought

In these consolidated actions, the NFL entities separately move, pursuant to CPLR 2201, for an order staying the prosecution of all indemnity-related claims. In the event of an adverse determination, the NFL entities move, pursuant to CPLR 5519(c),

Index No. 652813/2012
Mtn Seq. No. 017

Page 8 of 15

Index No. 652933/2012
Mtn Seq. No. 013

for a stay pending an appeal to the Appellate Division, First Department of my decision and order. These motions (mtn seq. nos. 013 and 017) are hereby consolidated for disposition. I held oral argument on these consolidated motions on October 13, 2016 (NYSCEF Doc. No. 274).

Contentions

The NFL entities argue that under New York law I am required to stay the indemnity-related discovery in these consolidated actions until there is a final resolution of the MDL Action, namely, resolution of the objectors' petition for review to the United States Supreme Court. In making this argument, they point out that New York courts apply a "bright-line rule" that "[a]lthough declaratory judgment claims as to whether the insurer owes a duty to defend are justiciable, claims for declaratory relief related to the duty to indemnify cannot proceed until full and final resolution of the underlying litigation, including exhaustion of appeals" (NFL entities' Mem. of Law [NYSCEF Doc. No. 362], at p. 3 [emphasis in the original]). To support this proposition, the NFL entities rely on Cordial Greens Country Club, Inc. v Aetna Cas. & Sur. Co., 41 NY2d 996 (1977) and its progeny.

Index No. 652813/2012
Mtn Seq. No. 017

Page 9 of 15

Index No. 652933/2012
Mtn Seq. No. 013

The NFL entities further argue that pursuant to CPLR 2201 discovery should be stayed otherwise they will be prejudiced in defending the MDL Action, specifically the opt-out litigation. They contend that by allowing discovery on indemnity-related claims to go forward the insurers will essentially be assisting plaintiffs with respect to establishing the NFL entities' liability. For instance, the insurers have asserted an "expected or intended" defense, i.e., that the NFL entities "expected or intended" the injuries suffered by the plaintiffs in the MDL Action (NFL entities' Mem. of Law [NYSCEF Doc. No. 362] at pp. 3, 14). Thus, while such discovery ostensibly may address indemnity-related issues, the NFL entities contend it may also be used, to their prejudice, to establish their liability in the MDL Action.

The NFL entities also argue that to permit discovery to go forward in the consolidated actions in advance of MDL Action would deprive Judge Brody of her jurisdictional authority to manage and control discovery in the first instance and would result in a misallocation of resources (NFL entities' Mem. of Law [NYSCEF Doc. No. 362] at p. 4).

In arguing for a stay of discovery in these consolidated actions, the NFL entities focus solely on the indemnity-related

Index No. 652813/2012
Mtn Seq. No. 017

Page 10 of 15

Index No. 652933/2012
Mtn Seq. No. 013

coverage issues. Their position is that if I stay discovery for these issues, then such a stay would necessarily extend to defense-related coverage issues (Tr., NYSCEF Doc. No. 402 [Index No. 652813] at pp. 10-11). Plaintiff insurers disagree and take the position that discovery must proceed with respect to coverage issues concerning defense and indemnity (Id. at pp. 8-10).

Discussion

The NFL entities' argument that I must stay discovery with respect to indemnity under Cordial Greens Country Club, Inc. v Aetna Cas. & Sur. Co., 41 NY2d 996 (1977) and its progeny is unavailing. A close reading of Cordial Greens clearly demonstrates that any determination of the indemnity-related issues must await resolution of the underlying personal injury action for which insurance coverage is sought (Id. at 997; see Frontier Insulation Contractors, Inc. v Merchants Mutual Ins. Co., 91 NY2d 169, 178 [1997] [Court declines to pass on the question of defendants' duty to indemnify at this early juncture, which predates any ultimate determination of the insurers' liability]; Allcity Ins. Co. v Fisch, 32 AD3d 407, 408 [2d Dept 2006] [declaration on indemnity issue premature prior to final determination of the underlying action]). Thus, although the NFL entities are correct in pointing out that indemnity-related

Index No. 652813/2012
Mtn Seq. No. 017

Page 11 of 15

Index No. 652933/2012
Mtn Seq. No. 013

coverage issues should await final resolution of the MDL Action, they fail to appreciate the procedural posture of the cases they rely on in making this argument. Procedurally, those cases indicate that the determinations were the result of dispositive motions or a trial. Here, plaintiff insurers are not seeking a determination concerning the indemnity coverage at this juncture. They merely, after waiting patiently for nearly four years, seek discovery. The frustration is palpable:

MR. CARROLL: ... I have been up before your Honor three times arguing this, and three times I have walked out of here with discovery going forward, and three times, they have somehow thrown up another roadblock.

* * *

Because twice now I have walked out of court and said we are getting what we should have gotten years and years ago. This has to stop. They will do anything to stop us from defending our case.

(Tr., NYSCEF Doc. No. 402, at p. 12). Under these circumstances, discovery concerning indemnity coverage issues is not the same as adjudicating them. To that point, adjudication, however, may be appropriate in certain instances:

[t]he general rule is that a declaratory judgment as to a carrier's obligation to indemnify may be granted in advance of trial of the underlying tort action only if it can be concluded as a matter of law that there is no possible factual or legal basis on which the insurer may eventually be held liable under its policy.

Index No. 652813/2012

Page 12 of 15

Mtn Seq. No. 017

Index No. 652933/2012

Mtn Seq. No. 013

(First State Ins. Co. v J & S United Amusement Corp., 67 NY2d 1044, 1046 [1986][emphasis added]). The highlighted language unmistakably indicates that in order to reach any conclusion "as a matter of law that there is no possible factual or legal basis on which the insurer may eventually be held liable under its policy" discovery is required.

Next, the NFL entities resort to CPLR 2201, which provides that a court "may grant a stay of proceedings ... upon such terms as may be just." Although a stay may be warranted in one action where there is complete identity of the parties, claims and relief sought in a related action (952 Associates, LLC v Palmer, 52 AD3d 236 [1st Dept 2008]), a stay may also be warranted when there is a substantial identity between two separate actions (Asher v Abbott Laboratories, 307 AD2d 211 [1st Dept 2003]). As such, even where there is not complete identity of the parties, consideration of "the goals of judicial economy, orderly procedure and the prevention of inequitable results", together with whether there are "overlapping issues and common questions of law and fact" and whether "the determination of [a related] action may dispose of or limit issues", in the action sought to be stayed, all factor into the stay application (Belopolsky v Renew Data Corp., 41 AD3d 322 [1st Dept 2007]).

Index No. 652813/2012
Mtn Seq. No. 017

Page 13 of 15

Index No. 652933/2012
Mtn Seq. No. 013

To begin, there is no complete identity of the parties in these consolidated actions with the MDL Action. Although the NFL entities are defendants in these actions, plaintiffs are completely different. Also, the claims advanced in the MDL Action are essentially negligence and fraud based, whereas the claims in the consolidated actions concern coverage issues.

The NFL entities' concern -- that absent a stay they will be prejudiced in defending the MDL Action given that discovery in the indemnity-related claims would assist the MDL Action plaintiffs with respect to establishing the NFL entities' liability -- is unfounded. Indeed, there is always unavoidable discovery tension between declaratory actions concerning coverage issues and the underlying actions for which coverage is sought. The fact that discovery in these consolidated actions could be sought to be used in the MDL Action is not, in and of itself, a basis for a stay. Indeed, such discovery may eventually be produced in the MDL Action. Whether it is produced here or in the MDL Action, or whether there is some overlap, are not bona fide reasons to stay discovery herein. In that regard, the NFL entities argue that discovery should proceed in the MDL Action in the first instance. That argument is unavailing. Other than a stay, there is no rule that provides for that priority. Also,

Index No. 652813/2012
Mtn Seq. No. 017

Page 14 of 15

Index No. 652933/2012
Mtn Seq. No. 013

the NFL entities have failed to show that discovery is underway in the MDL Action.

As to their concern that plaintiff insurers would seek to depose individuals, that is an overreach given the fact that there has only been limited discovery at this point in time (Tr., NYSCEF Doc. No. 402 [Index No. 652813/2012] p. 42). Any attempt to conduct a deposition at this juncture, unless circumstances warranted, would be premature. Further, any concern that discovery deemed confidential would be disseminated is addressed by way of the parties' confidentiality order. If the MDL Action plaintiffs seek to set aside that order, I will address that issue at the appropriate time. Plaintiff insurers have waited long enough and have indulged me. The time is now. Under these circumstances, I find that the NFL entities have failed to demonstrate that a stay of discovery is warranted.

The NFL entities' motion, pursuant to CPLR 5591(c), for a stay pending appeal of this decision and order is denied without prejudice to renew before the Appellate Division, First Department.

Accordingly, it is hereby

ORDERED that the NFL entities' motion for a stay is denied; and it is further

Index No. 652813/2012
Mtn Seq. No. 017

Page 15 of 15

Index No. 652933/2012
Mtn Seq. No. 013

ORDERED that the NFL entities' motion, pursuant to CPLR 2201, for a stay is denied; it is further

ORDERED that the NFL entities' motion, pursuant to CPLR 5519(c), for a stay pending appeal is denied without prejudice to renew before the Appellate Division, First Department; it is further

ORDERED that counsel shall resubmit proposed case management orders, in editable format, on or before by November 9, 2016.

This memorandum opinion constitutes the decision and order of the Court.

Dated:

10/28/16

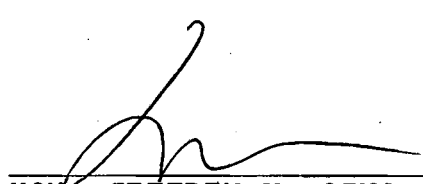

HON. JEFFREY K. OING, J.S.C.
JEFFREY K. OING
J.S.

EXHIBIT G

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM PART 48

-----X
ALTERRA AMERICA INSURANCE COMPANY,

Index No. 652813/2012

Plaintiff,

-against-

NATIONAL FOOTBALL LEAGUE AND NFL
PROPERTIES, LLC, ET AL

Defendants.
-----X

**INSURERS' SECOND
OMNIBUS DEMAND
FOR DISCOVERY AND
INSPECTION TO
NATIONAL FOOTBALL
LEAGUE & NFL
PROPERTIES LLC**

DISCOVER PROPERTY & CASUALTY
COMPANY, ET AL

Index No. 652933/2012

Plaintiffs,

-against-

NATIONAL FOOTBALL LEAGUE, NFL
PROPERTIES LLC, ET AL

Defendants.
----- X

PLEASE TAKE NOTICE, that pursuant to CPLR § 3101, Commercial Division Rule 11-e, and the Case Management Order dated November 14, 2016, the insurer parties identified in Exhibit A demand that Defendants National Football League and NFL Properties LLC provide written responses to the following requests by March 3, 2017, and permit discovery and inspection as set forth herein.

DEFINITIONS

The following definitions are applicable throughout these Requests and are incorporated into each Request:

1. “Claimants” means the plaintiffs in the Head Trauma Litigation, any former NFL player represented by a representative plaintiff in the Head Trauma Litigation, and any Person asserting a claim against You alleging that You concealed or failed to disclose the effects of head trauma suffered by NFL players or failed to warn and protect NFL players against Alleged Brain Injury.

2. “Communication” means any oral or written exchange of information between or among any person or entity, including the original and every non-identical copy or reproduction of any Document, email, fax, letter, memorandum, or telex, and any record of any oral discussion, meeting, negotiation, or telephone call.

3. “Head Trauma Litigation” refers to all claims and underlying lawsuits filed against the NFL and/or NFL Properties alleging that the NFL and/or NFL Properties concealed or failed to disclose the effects of concussions or other head trauma suffered by NFL players or failed to warn or protect NFL players against risks associated with concussions and sub-concussive impacts, or other head trauma, including mild traumatic brain injury, Chronic Traumatic Encephalopathy, or other neurological injuries or diseases, and includes all cases transferred to the United States District Court for the Eastern District of Pennsylvania in *In Re National Football League Players’ Concussion Injury Litigation*, MDL No. 12-md-2323.

4. “Alleged Brain Injury” or “Alleged Brain Injuries” mean any condition, disorder or disease that allegedly resulted from single or repetitive concussive or sub-concussive head trauma, including but not limited to traumatic brain injuries (mild, moderate, or severe),

neurocognitive impairment, neurological injury or disease, Alzheimer's Disease, Parkinson's Disease, Amyotrophic Lateral Sclerosis (ALS), Chronic Traumatic Encephalopathy (CTE), dementia, cognitive injury or disorder, memory loss, anxiety or mood disorders, depression, sleeplessness, impulse control problems, or headaches, whether or not such condition, disorder, or disease in fact does result from concussive or subconcussive head trauma. "Alleged Brain Injury(ies)" also includes those conditions, disorders, or diseases alleged by the Claimants in the Head Trauma Litigation.

5. "Class Action Settlement" refers to the settlement approved by the United States District Court for the Eastern District of Pennsylvania on April 22, 2015 and affirmed by the Court of Appeals for the Third Circuit on April 18, 2016.

6. "Document" means the original and every non-identical copy or reproduction of every paper or other record, regardless of origin or location, whether sent or received or made or used internally, in whatever form, that either (a) is currently or was formerly in Your possession, custody or control, or (b) was prepared by or for You. "Document" includes handwritten, printed, typed, electronically stored, computerized, recorded, programmed, or graphic matter of any kind, however produced or reproduced, including but not limited to agreements, contracts, applications, letters, emails, correspondence, telegrams, telefaxes, wires, books of account, indices, forms, publications, guidelines, manuals, files, memoranda of all types, instructions, confirmations, invoices, calendars, diaries, desk books, schedules, reports, studies, surveys, speeches, minutes of all meetings, pamphlets, notes, records, charts, tabulations, compilations, summaries, financial statements, accounting records, interoffice and intra-office communications, transcripts, computer cards, tapes or disks, printouts, information contained in, or retrievable from computer programs, tape or other voice recordings, records of meetings,

conferences, telephone conversations, or other communications, microfilm, photographs, ledgers, licenses, vouchers, bank checks, purchase orders, charge slips, hotel charges, tax returns, receipts, working papers, statistical records, delivery records, stenographers' notebooks, appointment books, timesheets, and logs and any drafts of the foregoing. Each draft or non-identical copy of a Document is considered a separate Document.

7. "Insurance Policies" means all primary, umbrella and excess liability policies, including but not limited to general liability insurance and commercial general liability insurance, issued by any Insurers or Captive Insurers from 1920 through 2016. "Insurance Policies" also includes all endorsements, declarations of insurance, riders, binders, side-bar agreements, Certificates of Insurance, amendments, and any other documents evidencing the existence of insurance.

8. "Captive Insurer" or "Captive Insurance" means any entity established, created, incorporated, or formed for the purpose of purchasing, issuing, placing, maintaining or otherwise overseeing a program of self-insurance, insurance, or reinsurance for You or any Member Club.

9. "Insurers" means each of the insurance companies named as parties to this action as well as any other any Person engaged in the business of insurance.

10. "Manufacturer Entities" means any entities that have designed, manufactured, sold, or distributed equipment designed to protect or maintain the health and safety of NFL players, including but not limited to Riddell, Inc., All American Sports Corporation, Easton-Bell Sports, Inc., and ProCap.

11. "Member Clubs" means the thirty-two current NFL team franchises and their predecessors and all former team franchises in the NFL or its predecessors, including their agents, employees, officers, directors, owners, general managers, executives, principals,

representatives, attorneys and law firms, committees and subcommittees, and any other individuals or entities acting at their direction or on their behalf.

12. “MTBI Committee” means the Mild Traumatic Brain Injury Committee formed by the NFL in 1994 and any successor entities including but not limited to the NFL Head, Neck and Spine Medical Committee, and includes all members who at any point served on the committee, including but not limited to Elliot Pellman, Ira Casson, David Viano, Mark Lovell, Joseph Maroon, Henry Feuer, Joel Morgenlander, Joseph Waeckerle, Thomas Naidich, Kevin Guskiewicz, John Powell, Edison Miyawaki, Ronnie Barnes, Jay Brunetti, Andrew Tucker, Richard Ellenbogen, Hunt Batjer, and Mitchel Berger.

13. “NFL” means Defendant the National Football League as well as its predecessors (including the American Football League), agents, employees, officers, directors, owners, general managers, executives, principals, representatives, attorneys and law firms, committees and subcommittees, and any other individuals or entities acting at its direction or on its behalf, including but not limited to the MTBI Committee and its members.

14. “NFL Properties” means Defendant NFL Properties, LLC, as well as its predecessors (including National Football League Properties, Inc.), agents, employees, officers, directors, owners, executives, principals, representatives, attorneys and law firms, committees and subcommittees, and any other individuals or entities acting at its direction or on its behalf.

15. “Person” and “Persons” include, but are not limited to, all natural and legal persons, partnerships, corporations (private or governmental), governmental entities (or any agency thereof, including, but not limited to, any subdivision, branch or department of any local, state or federal government), trusts, sole proprietorships, unincorporated associations, and any other legal entity.

16. “Opt-Outs” means any former NFL players or their family members or representatives that opted out of the Class Action Settlement, including but not limited to any Opt-Outs who have filed suit against the NFL and/or NFL Properties.

17. “Objectors” means any former NFL players or their family members or representatives that objected to the approval of the Class Action Settlement.

18. “Appeal” means the appeals filed by certain Objectors to the Class Action Settlement with the United States Court of Appeals for the Third Circuit and certiorari proceedings in the Supreme Court of the United States.

19. “You” or “Your” refers to the NFL and NFL Properties, jointly and individually, so as to make the Requests inclusive rather than exclusive.

20. “Relating to” or “related to” means regarding, pertaining or relative to, in connection with, concerning, referring in any way to, referencing or discussing in any way, analyzing, comprising, reflecting in any way, embodying or recording, evidencing, or containing any information pertaining to the referenced subject matter.

INSTRUCTIONS

1. Answer each Request separately and fully in writing and under oath.
2. You must obtain and produce all Documents in your possession, custody, control, or otherwise available to You or Your employees, agents, representatives, officers, directors, affiliates, predecessors and successors-in-interest, subsidiaries, parents, divisions, experts, and attorneys.
3. If the NFL and NFL Properties have different responses to any Document Request, each entity must respond separately.

4. All Documents that respond, in whole or in part, to any part of any paragraph of any Request must be produced in their entirety, including all attachments and enclosures.

5. If You do not have all the Documents responsive to any Request, please so state and identify each entity, organization, corporation, association, partnership, company, or person who You know or believe may have such documents.

6. Each Request requires You to produce the original Document. If the original Document is unavailable, You must produce a copy. All copies of a Document must be produced if they differ in any respect from the original.

7. The following rules of construction apply to these Requests as is necessary to make these Requests inclusive rather than exclusive: (a) the terms “and” or “or” are construed both conjunctively and disjunctively; (b) the singular of each term is construed to include the plural and the plural is construed to include the singular; (c) all verbs are construed to include all tenses; (d) all words have their plain and ordinary meanings, except that any word that You understand to have a specialized or technical meaning has all plain and ordinary meanings as well as all specialized and technical meanings.

8. If You are unable to answer any of these Requests completely, after exercising due diligence to secure the Documents necessary to provide a complete answer, so state, and answer each such Request to the fullest extent possible. Specify the extent of Your knowledge, the reasons underlying Your inability to secure some or all of the Documents responsive to the Request, and the efforts You made to obtain the requested Documents.

9. Where You object to any Request, state with specificity all bases and grounds for Your objection.

10. With respect to any Document or portion thereof withheld by counsel in the belief that the Document or portion thereof may be privileged, You must produce so much of each Document as does not contain any alleged privileged information and for each withheld Document (or portion thereof), identify the Document and any person and entity other than a natural person associated with the Document to the extent possible consistent with the privilege asserted, including: (a) the author(s) of the Document; (b) the sender(s) of the Document; (c) the recipient(s) of the Document, including those to whom copies were exhibited at any time; (d) the person(s) now possessing the Document or copies thereof; (e) the person(s) who at any time read or reviewed the Document or copies thereof; (f) the date of the Document and the date it was received by person(s) now possessing the Document; (g) a brief description of the nature and general subject matter of the Document; and (h) the privilege asserted.

11. If any Document responsive to these Requests has been lost or destroyed, explain the circumstances surrounding its disposition and identify the person directing or authorizing same, and the date(s) thereof. Identify each Document by listing its author, the author's address, Document type (*e.g.*, letter, memorandum, email, chart, etc.), date, subject matter, present location(s), and custodian(s); and state whether the Document (or copies) is still in existence.

12. Each Person consulted to respond to any Request must be identified in the body of the answer to the particular Request.

13. If any proper name used herein is incorrect, You must construe it as the correct proper name if the correct name is reasonably identifiable from the name used.

14. You must produce the Documents as they are kept in the usual course of business or organize and label them to correspond with each Request.

15. Pursuant to CPLR § 3101(h), You must timely amend or supplement Your responses to these Requests in the circumstances where such action is required by this and other New York Rules of Civil Procedure, including whenever You become aware of additional Documents responsive to any Request after the time for compliance.

16. You are further advised that, although Your response may be complete when made, You must amend Your response if You obtain information upon the basis of which: (a) You know that the original response was incorrect, or (b) You know that, although the original response was correct when made, it is no longer correct in circumstances such that a failure to amend the response is, in substance, concealment.

17. Unless otherwise indicated in a particular Request, the relevant time period applicable to all of the Requests is 1920 to the present.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: All Documents that You stated would be produced in Your responses to the Insurers' First Omnibus Set of Document Requests or any Insurer's individual document requests that You have not yet produced.

REQUEST NO. 2: All Insurance Policies issued to You (or otherwise providing coverage to You) that You have not previously produced, including any Insurance Policies issued by a Captive Insurer.

REQUEST NO. 3: All Insurance Policies issued to (or otherwise providing coverage to) NFL Europe, NFL Europa League, World League of American Football, World League of Georgia, Inc. or NFL Europe Florida, Inc.

REQUEST NO. 4: All Communications with any Insurer relating to Alleged Brain Injury, the Head Trauma Litigation, or the Class Action Settlement, including but not limited to Communications regarding notice of the Head Trauma Litigation, the terms of the Class Action Settlement, the valuation of the Class Action Settlement, or the Insurer's consent to the Class Action Settlement, and any related Documents.

REQUEST NO. 5: All Communications between You and any Insurer or insurance broker relating to the existence, purchase, terms, or negotiation of insurance that would cover claims for Alleged Brain Injury and any related Documents, including but not limited to any Communications or Documents concerning exclusions from coverage for neurological injuries.

REQUEST NO. 6: All Documents and Communications related to the existence of, terms of, or efforts to locate any insurance policies that You allege any Insurer issued to You for which a complete copy of such policy has not been located to date.

REQUEST NO. 7: All Documents and Communications relating to the existence of any Captive Insurer or Captive Insurance program created, established, or otherwise used by You at any time from 1920 to the present, including but not limited to incorporation papers, mission statements, guidelines, bylaws, policies, or procedures.

REQUEST NO. 8: All Insurance Policies under which You assert entitlement to coverage for the Head Trauma Litigation or the Class Action Settlement as an additional insured or additional named insured.

REQUEST NO. 9: All invoices relating to payments made or costs incurred by the NFL in connection with the Head Trauma Litigation or Class Action Settlement for which the NFL seeks reimbursement from the Insurers and all Documents reflecting payment of such invoices by the NFL.

REQUEST NO. 10: All invoices relating to payments made or costs incurred by NFL Properties in connection with the Head Trauma Litigation or Class Action Settlement for which NFL Properties seeks reimbursement from the Insurers and all Documents reflecting payment of such invoices by NFL Properties.

REQUEST NO. 11: All Documents and Communications related to reimbursement of any amounts included within Requests No. 9 & 10 received by You from the Insurers or any other Person(s).

REQUEST NO. 12: All Documents and Communications related to any amounts claimed, recovered, or paid on Your behalf in connection with the Head Trauma Litigation or the Class Action Settlement under any insurance policy issued to You or any related entity, including but not limited to any Documents evidencing the damages alleged in your answers to Interrogatories Nos. 16 and 17 in the Insurers' Second Omnibus Set of Interrogatories.

REQUEST NO. 13: All Documents relating to the division or allocation between the NFL, NFL Properties and any other Person of defense costs and expenses incurred in the Head Trauma Litigation or the payment of any judgments or settlements related to the Head Trauma Litigation.

REQUEST NO. 14: All Communications by or to You, or by or to any Member Clubs, relating to insurance coverage for concussions or other head injuries, Alleged Brain Injury, the Head Trauma Litigation, or the Class Action Settlement, including all related Documents.

REQUEST NO. 15: All Documents relating to the business or financial relationship between You and the Member Clubs.

REQUEST NO. 16: All Documents and Communications relating to the allocation of financial responsibility for liabilities incurred by You as between You and the Member Clubs.

REQUEST NO. 17: All Documents and Communications relating to the allocation of financial responsibility for liabilities as between NFL and NFL Properties.

REQUEST NO. 18: All Documents and Communications relating to the business or financial relationship between You and NFL Europe, NFL Europa League, World League of American Football, World League of Georgia, Inc. or NFL Europe Florida, Inc.

REQUEST NO. 19: All organizational charts of the NFL and NFL Properties, respectively, since 2007.

REQUEST NO. 20: All Documents relating to the formation of the NFL and NFL Properties, respectively, and all amendments or revisions to such Documents.

REQUEST NO. 21: All lists, databases, compilations, or spreadsheets maintained by You containing data about former NFL football players, including but not limited to name, date of birth, dates of NFL career, team(s) played for, concussions or Alleged Brain Injuries sustained, or any similar information.

REQUEST NO. 22: All lists, databases, compilations, or spreadsheets maintained by You containing data about former players in NFL Europe, NFL Europa League, World League of American Football, World League of Georgia, Inc. or NFL Europe Florida, Inc., including but not limited to name, date of birth, dates of career, team(s) played for, concussions or Alleged Brain Injuries sustained, or any similar information.

REQUEST NO. 23: All lists, databases, compilations, or spreadsheets maintained by You containing data identifying which former NFL players participated in Super Bowl or Pro Bowl games for each year since 1970.

REQUEST NO. 24: All information captured by the NFL Injury Surveillance System from inception through February 13, 2015, and all related Documents and Communications discussing any information recorded in the NFL Injury Surveillance System.

REQUEST NO. 25: All injury reports relating to an NFL player made to the media or general public by You or by any Member Club before February 14, 2015.

REQUEST NO. 26: All Documents and Communications relating to any concussion, head trauma, or Alleged Brain Injury suffered by any NFL player prior to February 14, 2015.

REQUEST NO. 27: All Documents and Communications relating to any workers compensation claim for Alleged Brain Injury filed by a former NFL player.

REQUEST NO. 28: All Documents and Communications relating to evaluation and settlement of the Head Trauma Litigation, including but not limited to evaluation of the NFL's and NFL Properties' potential liability (respectively) or the reasonableness of the Class Action Settlement and Communications with Your personnel, with Member Clubs, or with Persons with ownership interests in Member Clubs relating to the merits of the Class Action Settlement.

REQUEST NO. 29: All Documents and Communications relating to the Head Trauma Litigation or Class Action Settlement, including but not limited to:

- (a) All Communications between You (including Your attorneys) and any Claimant or Claimant's attorney;
- (b) All mediation statements or submissions by any party;
- (c) All written demands, offers or proposals made by You or the Claimants, and all Documents related to or discussing oral demands, offers, or proposals;
- (d) All proposals made by a mediator, and all Documents related to or discussing such proposals;
- (e) All Communications exchanged between You and any Insurer relating to the Class Action Settlement;
- (f) All drafts of the Class Action Settlement agreement;
- (g) All reports, affidavits, declarations, letters or other Documents authored by any of Your experts or consultants relating to the Class Action Settlement;
- (h) All reports, affidavits, declarations, letters or other Documents authored by any the Claimants' or Objectors' experts or consultants in connection with the Class Action Settlement;
- (i) All Documents filed in support of or against preliminary approval or final approval of the Class Action Settlement;
- (j) All Documents filed in the Appeal;
- (k) All Communications between You (including Your attorneys) and any Person authorized to administer the Class Action Settlement or any Special Master

appointed in connection with the Head Trauma Litigation or the Class Action Settlement; and

- (l) All Documents and Communications related to claims for compensation under the Class Action Settlement, including but not limited to all submitted claim forms and all records of payment.

REQUEST NO. 30: All Documents and Communications related to Your understanding, on or before February 13, 2015, of the development of the neurological conditions compensated by the Class Action Settlement, including but not limited to all Documents reviewed, relied upon, or considered in connection with the Class Action Settlement by You (including Your attorneys and experts) that concern the causation, disease mechanisms, development, manifestation, progression, or treatment of any of the compensated conditions.

REQUEST NO. 31: All Communications between You and any Manufacturer Entities relating to concussions, Alleged Brain Injuries, the Head Trauma Litigation, or Class Action Settlement, including any related Documents.

REQUEST NO. 32: All contracts between You and any Manufacturer Entity, including but not limited to any agreement to indemnify or hold harmless the NFL or NFL Properties.

REQUEST NO. 33: All Communications between You and the National Football League Players Association or any of its officers or agents related to concussions, head injuries, Alleged Brain Injuries, the Head Trauma Litigation, or the Class Action Settlement, including any related Documents.

REQUEST NO. 34: All Documents and Communications relating to any governmental inquiry, investigation, or discussion of alleged misleading claims regarding prevention or treatment of concussions, including but not limited to Communications between You and the United States Congress or the Federal Trade Commission or any of their members, officers, employees, or agents, and any related Documents.

REQUEST NO. 35: All Documents and Communications relating to any efforts by You to seek participation in or contribution to the Class Action Settlement from any other potentially responsible tortfeasors.

REQUEST NO. 36: All Documents and Communications relating to any indemnity agreements (whether memorialized in a stand-alone Document or as part of a larger Document)

between You and the Member Clubs or Your pursuit of defense or indemnification from any Member Club(s) in connection with the Head Trauma Litigation, the Class Action Settlement or any other lawsuit.

REQUEST NO. 37: A current list of all Opt-Outs, including full name, date of birth, dates of NFL career, team(s) played for, Alleged Brain Injuries and any concussions or other head injuries.

REQUEST NO. 38: All Communications between You and any Objector or Opt-Out or his or her counsel, including any discussion of settling the claims of any Objector or Opt-Out, and all related Documents.

REQUEST NO. 39: All analyses or evaluations of the potential value of the Opt-Outs' claims prepared by or for You.

REQUEST NO. 40: All Documents and Communications prepared by You or any other Person on Your behalf relating to the timing and amount of benefits anticipated to be paid under the Class Action Settlement.

REQUEST NO. 41: All Documents and Communications relating to Your satisfaction of Your payment obligations under the Class Action Settlement.

REQUEST NO. 42: All Documents and Communications relating to Your first knowledge of every claim and potential claim related to Alleged Brain Injury sustained by each former NFL player, including but not limited to any notice, claim or request for assistance or benefits made to You under any NFL program prior to commencement of the Head Trauma Litigation.

REQUEST NO. 43: All Documents and Communications relating to disability claims of any former NFL players relating to Alleged Brain Injury and any subsequent appeals, including those of former NFL player Mike Webster.

REQUEST NO. 44: All Documents and Communications relating to any former NFL player's claim for benefits under the Bert Bell/Pete Rozelle NFL Player Retirement Plan or any Collective Bargaining Agreement that involves any Alleged Brain Injury.

REQUEST NO. 45: All Documents and Communications relating to the November 1, 1998 amendment to the governing documents of the Bert Bell/Pete Rozelle NFL Player Retirement Plan that added language relating to awards of benefits for a “psychological/psychiatric disorder” that was “caused by or relates to a head injury (or injuries) sustained by a player arising out of League football activities (*e.g.*, repetitive concussions).”

REQUEST NO. 46: All Documents and Communications relating to the Alleged Brain Injuries or deaths of former NFL players including but not limited to Merrill Hoge, Mike Webster, Justin Strzelczyk, Terry Long, Andre Waters, Dave Duerson, and Junior Seau, including any related litigation against You, the Member Clubs, or any of Your or the Member Clubs’ medical, training or other professional personnel.

REQUEST NO. 47: All Documents and Communications relating to the treatment of concussions or Alleged Brain Injuries by Member Clubs or their medical, training, or other professional staffs.

REQUEST NO. 48: All Documents and Communications relating to the formation of the NFL Injury & Safety Panel.

REQUEST NO. 49: All Documents and Communications relating to the formation of the MTBI Committee or the Head, Neck and Spine Medical Committee, including but not limited to the reasons for their formation.

REQUEST NO. 50: All Documents and Communications relating to the appointment or removal of each member of the MTBI Committee and its successors.

REQUEST NO. 51: All Documents and Communications generated by, sent to, reviewed by, maintained by, or mentioning the NFL Injury & Safety Panel, including but not limited to agendas, minutes, presentations, transcripts, notes or other Documents.

REQUEST NO. 52: All Documents and Communications relating to payments made in connection with the NFL Injury & Safety Panel, the MTBI Committee, any of their successors, or any of their officers or members, including but not limited to budgets, invoices, contracts, or records of payment.

REQUEST NO. 53: All Documents and Communications generated by, sent to, reviewed by, maintained by, or mentioning the MTBI Committee, including but not limited to

agendas, minutes, presentations, transcripts, studies or other research findings, notes or other Documents.

REQUEST NO. 54: All Documents and Communications related to any recommendations, proposals, or other input given by the MTBI Committee regarding prevention of injury in NFL players, protocols for testing or diagnosing NFL players, or return-to-play guidelines.

REQUEST NO. 55: All Communications between You and the NFL Physicians Society or any of its directors, officers, or members related to (i) the diagnosis, reporting, or treatment of concussions, postconcussion syndrome, other head trauma, or Alleged Brain Injury in current or former NFL players; (ii) the Head Trauma Litigation; (iii) the Class Action Settlement, or (iv) Dr. Elliot Pellman, and any related Documents.

REQUEST NO. 56: All Communications between You and the Professional Football Athletic Trainers Society or any of its directors, officers, or members related to the diagnosis, reporting, or treatment of concussions, postconcussion syndrome, other head injury, or Alleged Brain Injury in current or former NFL players or the Head Trauma Litigation or the Class Action Settlement, and any related Documents.

REQUEST NO. 57: All Documents and Communications related to any research related to head injuries or Alleged Brain Injury that was proposed to, considered by, requested by, sponsored by, or funded by You.

REQUEST NO. 58: All Documents and Communications related to any retention of or consultation with any physician, psychologist or scientist regarding evaluation, analysis, or critique of any disease, treatment, scientific claim, or medical claim related to injuries to NFL players.

REQUEST NO. 59: All Documents and Communications relating to the request that *Neurosurgery* retract the 2005 paper by Dr. Bennet Omalu and others titled “Chronic traumatic encephalopathy in a National Football League player.”

REQUEST NO. 60: All Documents and Communications between You and *Neurosurgery* related to concussions, the potential effects or risks of head trauma sustained in football or Alleged Brain Injuries.

REQUEST NO. 61: All articles, papers, treatises, editorials, letters, statements, criticisms, or studies authored, sponsored, or published by You relating to concussions, the long-term effects or risks of head trauma sustained in football, the potential relationship between head trauma and Alleged Brain Injury, or others' statements or research on these topics.

REQUEST NO. 62: All Documents and Communications relating to the resignation of Dr. Elliot Pellman as chair of the MTBI Committee in 2007, Dr. Pellman's involvement with the NFL or any Member Club after his resignation as chair of the MTBI Committee in 2007, and Dr. Pellman's resignation as medical advisor to the NFL in 2016.

REQUEST NO. 63: All Documents and Communications generated by, sent to, reviewed by, maintained by, or mentioning the Head, Neck and Spine Committee, including but not limited to agendas, minutes, presentations, transcripts, studies or other research findings, notes or other Documents.

REQUEST NO. 64: All Communications between You and any of the following people, and all Documents or Communications relating to any of the following people: (i) Dr. Elliot Pellman; (ii) Dr. Ira Casson; (iii) Dr. David Viano; (iv) Dr. Bennett Omalu; (v) Dr. John Powell; (vi) Dr. Peter Davies; (vii) Dr. John McShane; (viii) Merrill Hoge; or (ix) Dr. William Barr.

REQUEST NO. 65: All Communications between You and any individuals associated with the Boston University CTE Center, including but not limited to Dr. Ann McKee, Dr. Robert Cantu, Dr. Robert Stern, and Christopher Nowinski, related to concussions, the potential effects or risks of head trauma sustained in football or Alleged Brain Injuries, the autopsies of former NFL players or donations of brains of former NFL players, and any related Documents.

REQUEST NO. 66: All Documents and Communications relating to any donations by You to the Boston University CTE Center.

REQUEST NO. 67: All Communications between You and the National Institutes of Health, the Foundation for the National Institutes of Health, the House Committee on Energy and Commerce, or any of their employees or agents, related to Alleged Brain Injuries or research funded by the NFL, and any related Documents.

REQUEST NO. 68: All Documents and Communications relating to donations made by You to the National Institutes of Health, the Foundation for the National Institutes of Health, or

any other entity relating, in whole or in part, to the study of head trauma or Alleged Brain Injuries.

REQUEST NO. 69: All Documents and Communications relating to the NFL Concussion Summit held in June 2007.

REQUEST NO. 70: All Documents and Communications relating to the Congressional hearings held by the House of Representatives Committee on the Judiciary on October 28, 2009 and January 4, 2010, including but not limited to all preparation materials, notes, outlines, presentations, talking points, mock hearing or question-and-answer sessions, transcripts, and post-hearing evaluations.

REQUEST NO. 71: All Documents and Communications relating to the roundtable discussion held by the House Energy & Commerce Subcommittee on Oversight & Investigations on March 14, 2016, including any preparation materials, notes, talking points, press releases, statements, mock hearing or question-and-answer sessions, transcripts, or post-roundtable evaluations.

REQUEST NO. 72: All Documents and Communications relating to any research regarding concussions, head injuries or Alleged Brain Injury sustained by NFL players prior to February 14, 2015.

REQUEST NO. 73: All Documents and Communications relating to the International Symposia on Concussion in Sport held in 2001, 2004, 2008, 2012, and 2016, including all Documents and Communications relating to Your participation or lack of participation in each Symposium.

REQUEST NO. 74: All Documents and Communications related to the diagnosis, reporting, or treatment of concussions, postconcussion syndrome, other head injury, or Alleged Brain Injury in current or former NFL players, including but not limited to all concussion protocols, return-to-play protocols, and reporting protocols.

REQUEST NO. 75: All Communications between You and ImPACT Applications, Inc., Dr. Mark Lovell, Dr. Michael “Micky” Collins, or Dr. Joseph Maroon and any related Documents, and all Documents related to the use of ImPACT neurological testing or any other neurological testing in the NFL.

REQUEST NO. 76: All Communications between You (or any Member Club) and any current or former NFL player (or NFL player's spouse or personal representative) relating to concussions, sub-concussive impacts, baseline testing, return-to-play following concussive injury, Alleged Brain Injury, the Head Trauma Litigation, or the Class Action Settlement, and any related Documents.

REQUEST NO. 77: All Documents and Communications related to concussion management guidelines published by the American Academy of Neurology, the Colorado Medical Society, or Dr. Robert Cantu.

REQUEST NO. 78: All Documents and Communications relating to the 88 Plan, including but not limited to Documents and Communications related to its creation, its projected costs, all applications for benefits thereunder, and all payments of benefit thereunder.

REQUEST NO. 79: All Documents and Communications relating to any proposed NFL rule changes intended to protect against head trauma or complications of head trauma.

REQUEST NO. 80: All Documents and Communications, including but not limited to research, articles, correspondence, studies, press releases, treatises, letters, or other materials, discussing or relating to concussions, the potential long-term effects or risks of head trauma sustained in football, or the potential relationship between head trauma and Alleged Brain Injury in Your possession since 1920.

REQUEST NO. 81: All Documents and Communications between You and Sony Pictures or any of its personnel or Peter Landesman relating to the feature film *Concussion*.

REQUEST NO. 82: All Documents and Communications between You, Mark Fainaru-Wada, Steve Fainaru, Three Rivers Press, Crown Publishing Group, or Penguin Random House Company regarding the book, *League of Denial*.

REQUEST NO. 83: All Documents and Communications between You, Jeanne Marie Laskas or Random House Publishing regarding the book, *Concussion*.

REQUEST NO. 84: All Documents and Communications between You, Jeanne Marie Laskas or GQ Magazine regarding the article, *Game Brain*.

REQUEST NO. 85: All Documents and Communications relating to public relations efforts You have made or considered relating to the Head Trauma Litigation or the Class Action Settlement.

REQUEST NO. 86: All Communications related to concussions, head injuries, Alleged Brain Injury, the Head Trauma Litigation, or the Class Action Settlement between You and Alan Schwartz, Ken Belson, Peter King, Malcolm Gladwell, Jackie MacMullan, Mark Fainaru-Wada, Steve Fainaru, Peter Keating, or Patrick Hruby.

REQUEST NO. 87: All Communications between You and any media outlets related to concussions, head injuries, Alleged Brain Injury, the Head Trauma Litigation, or the Class Action Settlement, including but not limited to ESPN, the New York Times, GQ, CBS, NBC, Fox Sports, PBS, or DIRECTV.

REQUEST NO. 88: All Documents related to any guidelines, policies, procedures, or protocols written or used by You at any time for arena displays, footage licensing requests, or NFL media productions with respect to display or replay of illegal plays, violent plays, injuries, concussions, or any similar topic.

REQUEST NO. 89: All Documents and Communications related to mock jury exercises, focus groups, surveys, or questionnaires undertaken by You in connection with the Head Trauma Litigation.

REQUEST NO. 90: All discovery served or exchanged in the Head Trauma Litigation, including but not limited to interrogatories, document requests, and requests for admission and all responses, document productions, subpoenas and any responses, and deposition transcripts.

REQUEST NO. 91: On or before Your deadline to disclose experts, a current resume or curriculum vitae, a written report explaining each opinion offered, and a copy of all materials reviewed and relied upon by each expert whose opinions You will offer in these cases.

REQUEST NO. 92: All Documents and Communications concerning Your Document retention, Document filing, Document storage, server capacity, server upgrades, or electronically-stored information retention in effect between 1990 and the present.

REQUEST NO. 93: All Documents and Communications relating to concussions, head injuries, Alleged Brain Injury, the Head Trauma Litigation, or the Class Action Settlement by or to You, including but not limited to emails, memoranda, meeting minutes, and draft minutes.

REQUEST NO. 94: All Documents and Communications relating to concussions or Alleged Brain Injuries between You and any Insurer or insurance broker.

Dated: February 1, 2017

Submitted on behalf of the Insurers by:

CARROLL, McNULTY & KULL LLC



Christopher R. Carroll, Esq.
Heather E. Simpson, Esq.
Mark F. Hamilton, Esq.
570 Lexington Avenue, 8th Floor
New York, New York 10022
T: (646) 625-4000

Attorneys for Defendants
TIG Insurance Company
United States Fire Insurance Company
The North River Insurance Company

Exhibit A

Alterra America Insurance Company
Discover Property & Casualty Insurance Company
St. Paul Protective Insurance Company
Travelers Casualty & Surety Company
Travelers Indemnity Company
Travelers Property Casualty Company of America
ACE American Insurance Company
AIG Property Casualty Company (f/k/a Chartis Property Casualty Company)
AIG Specialty Insurance Company (f/k/a Chartis Specialty Insurance Company)
Allstate Insurance Company (solely as successor in interest to Northbrook Excess and Surplus Insurance Company, formerly Northbrook Insurance Company)
American Guarantee & Liability Insurance Company
Arrowood Indemnity Company (f/k/a Royal Indemnity Company)
Bedivere Insurance Company f/k/a OneBeacon Insurance Company
Century Indemnity Company (as successor to Insurance Company of North America, Indemnity Insurance Company of North America, and California Union Insurance Company)
Continental Casualty Company
The Continental Insurance Company
Federal Insurance Company
Great Northern Insurance Company
Guarantee Insurance Company
Hartford Accident and Indemnity Company
Illinois National Insurance Company
Illinois Union Insurance Company
Munich Reinsurance America, Inc.
National Union Fire Insurance Company of Pittsburgh, Pa.
New England Reinsurance Company
The North River Insurance Company
Pacific Indemnity Company
TIG Insurance Company
United States Fire Insurance Company
Vigilant Insurance Company
Westchester Fire Insurance Company
XL Insurance America Inc.

EXHIBIT H

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM PART 48

-----X
ALTERRA AMERICA INSURANCE COMPANY,

Index No. 652813/2012

Plaintiff,

-against-

NATIONAL FOOTBALL LEAGUE AND NFL
PROPERTIES, LLC, ET AL

Defendants.

**INSURERS' FIRST
OMNIBUS DEMAND
FOR DISCOVERY
AND INSPECTION TO
NFL PROPERTIES, LLC**

-----X
DISCOVER PROPERTY & CASUALTY
COMPANY, ET AL

Index No. 652933/2012

Plaintiffs,

-against-

NATIONAL FOOTBALL LEAGUE, NFL
PROPERTIES LLC, ET AL

Defendants.

-----X

PLEASE TAKE NOTICE, that pursuant to CPLR §3101 and the Preliminary Conference Order dated April 12, 2013, the insurance carrier parties demand that Defendant NFL Properties, LLC ("NFL Properties") provide written responses and permit discovery and inspection as follows:¹

¹ Pursuant to the direction of the Court during the case management conference held on April 12, 2013, and the instructions of the Preliminary Conference Order of the same date, the insurers submit this First Omnibus Demand for Discovery and Inspection. Pursuant to the agreement between the insurers, the NFL and NFL Properties, each of the parties has the right to serve subsequent discovery as appropriate.

DEFINITIONS

Unless the terms of a particular Request specifically indicates otherwise, the following definitions are applicable throughout these Requests and are incorporated into each specific Request:

1. "Claimants" means the plaintiffs asserting the claims in the Concussion Litigation and any person asserting a claim against the NFL and/or NFL Properties alleging that the NFL and/or NFL Properties concealed and/or failed to disclose the long-term effects of concussions suffered by NFL players or failed to warn and protect NFL players against risks associated with concussions, including mild traumatic brain injury, Chronic Traumatic Encephalopathy and other neurological problems.

2. "Communication" means the original and every non-identical copy or reproduction of any oral discussion, document, e-mail, facsimile transmission, letter, meeting, memorandum, negotiation, telephone call, telex or any other oral or written exchange of information, between or among any person and/or entity.

3. "Concussion Litigation" refers to all underlying lawsuits filed against the NFL and/or NFL Properties alleging that the NFL and/or NFL Properties concealed and/or failed to disclose the long-term effects of concussions suffered by NFL players or failed to warn and protect NFL players against risks associated with concussions, including mild traumatic brain injury, Chronic Traumatic Encephalopathy and other neurological problems.

4. "Document" shall mean the original and every non-identical copy or reproduction of every paper or other record, regardless of origin or location, whether sent or received or made or used internally, in whatever form, that either (a) is currently or was formerly in the possession, custody or control of NFL Properties, (b) was prepared by or for NFL Properties, or (c) NFL

Properties has seen or otherwise knows or believes to exist. The word "Document" as used herein is defined as handwritten, printed, typed, computerized, recorded, programmed, or graphic matter of any kind of nature, however produced or reproduced, including, but not limited to, agreements, contracts, applications, letters, e-mails, correspondence, telegrams, telefaxes, wires, books of account, indices, forms, publications, guidelines, manuals, files, memoranda of all types, instructions, confirmations, invoices, calendars, diaries, desk books, schedules, reports, studies, surveys, speeches, minutes of all meetings, pamphlets, notes, records, charts, tabulations, compilations, summaries, financial statements, accounting records, interoffice and intra-office communications, transcripts, computer cards, tapes or disks, printouts, information contained in, or retrievable from computer programs, tape or other voice recordings, records of meetings, conferences, telephone conversations, or other communications, microfilm, photographs, ledgers, licenses, vouchers, bank checks, purchase orders, charge slips, hotel charges, tax returns, receipts, working papers, statistical records, delivery records, stenographers' notebooks, appointment books, timesheets and logs and any drafts of the foregoing. All drafts and non-identical copies of a document shall be considered a separate document.

5. "Employee" means any former or present employee, officer, director, agent, representative, consultant, office, committee, department, division, or group within or retained by NFL Properties, including those at corporate headquarters or at regional or local offices.

6. "Identify" in reference to an individual means to provide the following information: (1) the person's full name; (2) the person's present or last known employer and position; (3) the person's present or last known home and business address; and (4) the person's present or last known home and business telephone numbers.

7. “Identify” in reference to a company, partnership or other organization means to provide the following information: (1) the entity’s full name; (2) the entity’s present or last known address; and (3) the entity’s present or last known telephone number.

8. “Identify” in reference to an oral communication means to provide the following information: (1) the date of the communication; (2) the names and positions of persons involved in and/or present during the communication; and (3) a summary of the substance of the communication.

9. “Insurance Policies” (individually an “Insurance Policy”) mean any and all primary, umbrella and excess liability policies including, but not limited to, general liability insurance and commercial general liability insurance, issued by any Insurers to NFL Properties during the relevant time period from 1940 through 2012. For purposes of this definition, these terms shall also include any and all endorsements, declarations of insurance, riders, binders, side-bar agreements, Certificates of Insurance, amendments, and/or any other documents evidencing the existence of insurance.

10. “Insurers” means each of the insurance companies named as parties to this action as well as any other any person, corporation, association, partnership or company which is engaged in the business of insurance.

11. “Manufacturer Entities” refers to any and all entities that have designed, manufactured, sold and/or distributed equipment designed to protect or maintain the health and safety of players in the NFL.

12. “Master Complaint” refers to the Multi-District Litigation in the United States District Court for the Eastern District of Pennsylvania in the case captioned, *In Re National Football League Players’ Concussion Injury Litigation*, MDL No. 12-md-2323, United States

District Court, Eastern District of Pennsylvania (referred to herein as the “MDL”), where the individual actions in the Concussion Litigation have been consolidated for all pre-trial proceedings including discovery.

13. “Member Clubs” refers to the thirty-two individual team franchises comprising the NFL.

14. “NFL” refers to Defendant the National Football League, American Football League, as well as its predecessors, agents, employees, officers, directors, owners, principals, representatives, all attorneys and law firms and any other individuals or entities acting or purporting to act at its direction or on its behalf.

15. “NFL Properties” refers to Defendant NFL Properties, LLC, National Football League Properties, Inc., as well as its predecessors, agents, employees, officers, directors, owners, principals, representatives, all attorneys and law firms and any other individuals or entities acting or purporting to act at its direction or on its behalf.

16. “Person” and “Persons” include, but is not limited to, all natural and legal persons, partnerships, corporations (private or governmental), governmental entities (or any agency thereof, including, but not limited to, any subdivision, branch or department of any local, state or federal government), trusts, sole proprietorships, unincorporated associations and any other legal entity.

17. “Policy Term” means any term, language, provision, part, condition or covenant included in any Insurance Policy, as defined herein.

18. “Underlying Claim(s)” means all lawsuits filed or claims asserted at any time against the NFL and/or NFL Properties and/or any NFL team alleging injury to NFL players

and/or their spouses arising out of concussions or other head or brain injury or trauma including, without limitation, the claims at issue in the Master Complaint.

INSTRUCTIONS

The following instructions are applicable throughout these Requests:

1. Answer each Request separately and fully in writing and under oath. Answers should include all responsive documents known to you.

2. You are required, in responding to these Requests, to obtain and furnish all documents in your possession, custody, control or otherwise available to you or your employees, agents, representatives, officers, directors, affiliates, predecessors and successors-in-interest, subsidiaries, parents, divisions, experts, and attorneys.

3. All documents that respond, in whole or in part, to any part of any paragraph of the following Requests shall be produced in their entirety, including all attachments and enclosures.

4. If you do not have all the documents responsive to any Request, please so state and identify each entity, organization, corporation, association, partnership, company or person who you know or believe may have such documents.

5. Each Request shall be deemed to call for the production of the original document. If the original document is unavailable, then a copy shall be produced. In addition, all copies of a document shall be produced if they differ in any respect from the original.

6. The following rules of construction apply to these Requests: (a) the terms “and” or “or” shall be construed either conjunctively or disjunctively as is necessary to make these Requests inclusive rather than exclusive; (b) the terms “any” and “all” shall mean “any and all”; (c) the term “each” shall be construed to include “any and all”; (d) the singular of each term shall

be construed to include the plural and the plural shall be construed to include the singular to make the Request inclusive rather than exclusive; (e) any Request propounded in the present tense shall be read as propounded in the past tense and vice versa; (f) all verbs shall be construed to include all tenses; (g) all words used herein shall be given their plain and ordinary meanings, except that all words that you understand to have a specialized or technical meaning shall be assigned all plain and ordinary meanings as well as all specialized and technical meanings; (h) the use of the term “Insurer” or reference to any individual insurance carrier shall include that carrier or “Insurer’s” corporate affiliates, divisions, subgroups, subsidiaries, parent corporations, predecessors-in-interest, successors, assigns, agents, brokers, legal representatives, trustees, consultants, accountants, appraisers, auditors, adjusters, and all representatives acting on its behalf, and its present and former officers, directors, servants, employees, and any other individual or entity acting or purporting to act at the direction or on behalf of such carrier or “Insurer”.

7. If you are unable to answer any of these Requests completely, after exercising due diligence to secure the documents necessary to provide a complete answer, so state, and answer each such Request to the fullest extent possible. Specify the extent of your knowledge, the reasons underlying your inability to secure some or all of the documents responsive to the Request, and the efforts you made to obtain the requested documents.

8. Where an objection is interposed to any Request, state with specificity all bases and grounds for such objection.

9. With respect to any document or portion thereof withheld by counsel in the belief that the document or some portion thereof may be privileged, counsel shall produce so much of each document as does not contain any alleged privileged information and for each withheld

document (or portion thereof), identify the document and any person and entity other than a natural person associated with the document to the extent possible consistent with the privilege asserted, including: (a) the author(s) of the document; (b) the sender(s) of the document; (c) the recipient(s) of the document, including those to whom copies were exhibited at any time; (d) the person(s) now having possession of the document or copies thereof; (e) the person(s) who at any time read or reviewed the document or copies thereof; (f) the date of the document and the date it was received by person(s) now in possession of the document or writing; (g) a brief description of the nature and general subject matter of the document; and (h) the privilege asserted and the statute, rule, decision or other basis which is claimed to give rise to the privilege.

10. If any document responsive to these Requests has been lost or destroyed, explain the circumstances surrounding such disposition and identify the person directing or authorizing same, and the date(s) thereof. Identify each document by listing its author, the author's address, type (*e.g.*, letter, memorandum, e-mail, chart, etc.), date, subject matter, present location(s) and custodian(s); and state whether the document (or copies) is still in existence.

11. Each person consulted to respond to any Request shall be identified in the body of the answer to the particular Request.

12. To the extent that any proper name used herein is incorrect, it is to be construed as the correct proper name if the correct name is reasonably identifiable from the name used.

13. You are requested to produce the documents as they are kept in the usual course of business or organize and label them to correspond with the categories in the Request.

14. Pursuant to CPLR §3101(h), you are directed and required to timely amend or supplement your responses to these Requests in the circumstances where such action is required

by this and other New York Rules of Civil Procedure, including at such time that you become aware of additional documents responsive hereto after the time for compliance.

15. You are further advised that, although your answer may be complete when made, you are under a duty to amend your answer should you obtain information upon the basis of which: (a) you know that the original answer was incorrect, or (b) you know that, although the original answer was correct when made, it is no longer correct in circumstances such that a failure to amend the answer is, in substance, concealment.

16. If a complete response to any Request set forth herein requires NFL Properties to disclose information regarding whether or not it expected or intended any bodily injury alleged in any Claim, NFL Properties should (1) state an objection to the scope of that Request, (2) withhold the Document regarding whether or not NFL Properties expected or intended any such injury and (3) otherwise respond to the Request in full.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Complete and accurate copies of any and all Documents reviewed or consulted in preparing NFL Properties' responses to Interrogatories served by any party to this action.

REQUEST NO. 2: Complete and accurate copies of each Insurance Policy under which NFL Properties contends it is entitled to insurance coverage in connection with the Underlying Claims, including those Insurance Policies under which NFL Properties contends it is covered as an additional insured.

REQUEST NO. 3: Complete and accurate copies of any and all Documents and Communications that evidence, discuss or relate to the existence of any Insurance Policies that NFL Properties cannot locate but which NFL Properties alleges were issued to NFL Properties and were in effect at any time from 1940 through the present, including but not limited to policies, endorsements, declarations of insurance, riders, binders, and Certificates of Insurance.

REQUEST NO. 4: Complete and accurate copies of any and all Documents and Communications between NFL Properties and any insurance agent or broker pertaining to the placement of insurance coverage at any time from 1940 to the present.

REQUEST NO. 5: Complete and accurate copies of any and all Documents, Communications or other tangible items upon which NFL Properties is relying on in its claim that NFL Properties is entitled to defense and/or indemnification from any Insurer with respect to the Underlying Claim(s).

REQUEST NO. 6: Complete and accurate copies of any and all Documents and Communications that evidence, discuss or relate to a tender, notification, demand or request for insurance coverage for the Underlying Claim(s) under any of the Insurance Policies issued by any Insurer.

REQUEST NO. 7: Complete and accurate copies of any and all Documents and Communications that evidence, discuss or relate to a tender, notification, demand or request for insurance coverage to any Insurer in connection with the Underlying Claim(s).

REQUEST NO. 8: Complete and accurate copies of any and all Documents that evidence, discuss or relate to Communications between NFL Properties and any of its Insurers, employees, agents, consultants, representatives or anyone else acting on NFL Properties' behalf regarding the Underlying Claim(s), including, but specifically not limited to, those Communications discussing, or in any way related to, NFL Properties' efforts to seek defense and/or indemnification from any Insurer for the Underlying Claim(s).

REQUEST NO. 9: Complete and accurate copies of any and all Documents and Communications that evidence, discuss or relate to each Insurer's response to NFL Properties' request for insurance coverage under such Insurer's Insurance Policies, including, but not limited to, reservation of rights letters and denial letters.

REQUEST NO. 10: Complete and accurate copies of any and all Documents and Communications that evidence, discuss or relate to any Insurer's payment of defense costs to NFL Properties in connection with the Underlying Claim(s).

REQUEST NO. 11: Complete and accurate copies of any and all non-privileged Documents that have come into existence or into the possession of NFL Properties or its counsel as a result of or in connection with the Underlying Claim(s), including but not limited to all:

- (a) complaints, Short Form complaints, answers, motion papers, orders and all other pleadings filed with respect to any Underlying Claim(s);
- (b) document demands, interrogatories and all other discovery related documents served by any party to any Underlying Claim(s) and complete copies of the corresponding responses to such discovery demands prepared by or on behalf of any other party to the Underlying Claim(s);
- (c) letters, emails and all other Communications by and between counsel for the NFL Properties and counsel for any of the underlying Claimants;

- (d) statements of representatives or employees of NFL Properties or any representatives or employees of any non-parties relating to the Underlying Claim(s);
- (e) any and all Documents that evidence, discuss or relate to any Communication, either written or oral, between NFL Properties and any other entity or person concerning a payment by NFL Properties to settle or resolve any Underlying Claim(s), including settlement demands, offers or proposals and NFL Properties' response(s) to same; and
- (f) any and all Documents that identify or evidence the time period(s) during which the former NFL player played in NFL games, the teams for which he played, all concussions or other head injuries suffered during his NFL career and all information known to NFL Properties regarding his alleged injuries, treatment and claimed damages.

REQUEST NO. 12: Complete and accurate copies of any and all Documents and Communications that evidence, discuss or relate to any and all costs which NFL Properties has incurred in connection with the Underlying Claim(s), including but not limited to attorneys' fees and expenses.

REQUEST NO. 13: Complete and accurate copies of any reports or other Communications prepared by any experts or consultants retained by NFL Properties in connection with the Claim(s), and any Communications to or from any of these experts or consultants.

REQUEST NO. 14: Any and all coverage chart(s) prepared by or for NFL Properties reflecting all known, potentially known, alleged, or hypothetical insurance coverage potentially available to NFL Properties for the Claim(s), including any primary, excess or umbrella policy.

REQUEST NO. 15: Any list or other compilation of the Claimants (including former players, their wives, and, if deceased, any executor or administrator of the former player's estate) including any descriptions of biographical information, claims and injuries.

REQUEST NO. 16: All documents reflecting the locations where any Insurance Policy identified in NFL Properties' responses to these requests or to interrogatories served on NFL Properties was accepted by NFL Properties, including any agents or representatives who were acting on its behalf.

REQUEST NO. 17: All documents reflecting where any Insurance Policy identified in NFL Properties' responses to these requests or interrogatories served upon NFL Properties was negotiated by NFL Properties and any Insurer, including any agents or representatives who were acting on behalf of any such party.

REQUEST NO. 18: All Documents reflecting the location from which insurance premiums were paid by NFL Properties or any agent or representative acting on NFL Properties'

behalf, for any Insurance Policy identified in NFL Properties' responses to these requests or interrogatories served upon NFL Properties.

REQUEST NO. 19: All Documents reflecting the location to which insurance premiums were paid by NFL Properties or any agent or representative acting on NFL Properties' behalf, for any Insurance Policy identified in NFL Properties' responses to these requests or interrogatories served upon NFL Properties.

REQUEST NO. 20: All Documents reflecting the location of the subject matter of any risk for which NFL Properties expected to be defended or indemnified for under any Insurance Policy identified in NFL Properties' responses to these requests or interrogatories served upon NFL Properties.

REQUEST NO. 21: All articles of incorporation for NFL Properties and/or other documents relating to the formation, existence and organization of NFL Properties as an entity or association.

REQUEST NO. 22: All Documents reflecting the establishment of the domicile of NFL Properties from the beginning of its existence to the present.

REQUEST NO. 23: All Documents reflecting the establishment of the headquarters or principal place of business of NFL Properties from the beginning of its existence to the present.

REQUEST NO. 24: All Documents evidencing or reflecting any claim made by NFL Properties, or any agent or representative acting on NFL Properties' behalf, at any time between 1940 and the present under any Insurance Policy identified in NFL Properties' responses to these requests or the interrogatories served upon NFL Properties in this action.

REQUEST NO. 25: All Documents related to any joint defense and/or common counsel agreement(s) between the NFL and NFL Properties relating to the Underlying Claim(s) including, but not limited to, agreements relating to the division and/or allocation of defense costs between the NFL and NFL Properties.

REQUEST NO. 26: All bills or invoices received by NFL Properties for any defense costs, fees and/or expenses from any law firm that has been engaged to represent NFL Properties in connection with the defense of the Underlying Claim(s).

REQUEST NO. 27: All Documents evidencing, reflecting or related to attorneys' fees and/or expenses paid by NFL Properties to any law firm that has been engaged to represent NFL Properties in connection with the defense of the Underlying Claim(s).

REQUEST NO. 28: All reports, letters, legal research memoranda or other Documents or Communications received by NFL Properties from defense counsel in connection with the Underlying Claims.

REQUEST NO. 29: All Documents evidencing, reflecting or related to any year for which NFL Properties was partially or wholly self-insured.

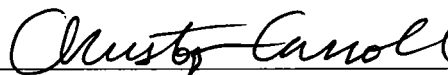
REQUEST NO. 30: All reports or other Documents or Communications related to any mock jury exercises undertaken by NFL Properties or its defense counsel in connection with the Underlying Claims.

REQUEST NO. 31: All deposition transcripts taken in connection with the Concussion Litigation.

Dated: May 10, 2013

Submitted on behalf of the Insurers by:

CARROLL, McNULTY & KULL LLC



Christopher R. Carroll, Esq.
Heather E. Simpson, Esq.
Mark F. Hamilton, Esq.
570 Lexington Avenue, 10th Floor
New York, New York 10022
T: (646) 625-4000

Attorneys for Defendants
TIG Insurance Company
United States Fire Insurance Company
The North River Insurance Company

and

PUTNEY, TWOMBLY, HALL & HIRSON LLP

Thomas A. Martin, Esq.
521 Fifth Avenue
New York, New York 10175
T: (212) 682-0020

HERMES, NETBURN, O'CONNOR
& SPEARING, P.C.
Kevin J. O'Connor, Esq.
Matthew C. Kalin, Esq.
265 Franklin Street, 7th Floor
Boston, Massachusetts 02110
T: (617) 728-0052

Attorneys for Discover Property & Casualty Insurance, St. Paul Protective Insurance Company, Travelers Casualty & Surety Company, Travelers Indemnity Company of America and Travelers Property Casualty Company of America

EXHIBIT I

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM PART 48

-----X
ALTERRA AMERICA INSURANCE COMPANY,

Index No. 652813/2012

Plaintiff,

-against-

NATIONAL FOOTBALL LEAGUE AND NFL
PROPERTIES, LLC, ET AL

**INSURERS' FIRST
OMNIBUS DEMAND
FOR DISCOVERY AND
INSPECTION TO
NATIONAL FOOTBALL
LEAGUE**

Defendants.
-----X

DISCOVER PROPERTY & CASUALTY
COMPANY, ET AL

Index No. 652933/2012

Plaintiffs,

-against-

NATIONAL FOOTBALL LEAGUE, NFL
PROPERTIES LLC, ET AL

Defendants.
-----X

PLEASE TAKE NOTICE, that pursuant to CPLR §3101 and the Preliminary Conference Order dated April 12, 2013, the insurance carrier parties demand that Defendant National Football League ("NFL") provide written responses and permit discovery and inspection as follows:¹

¹ Pursuant to the direction of the Court during the case management conference held on April 12, 2013, and the instructions of the Preliminary Conference Order of the same date, the insurers submit this First Omnibus Demand for Discovery and Inspection. Pursuant to the agreement between the insurers, the NFL and NFL Properties, each of the parties has the right to serve subsequent discovery as appropriate.

DEFINITIONS

Unless the terms of a particular Request specifically indicates otherwise, the following definitions are applicable throughout these Requests and are incorporated into each specific Request:

1. “Claimants” means the plaintiffs asserting the claims in the Concussion Litigation and any person asserting a claim against the NFL and/or NFL Properties alleging that the NFL and/or NFL Properties concealed and/or failed to disclose the long-term effects of concussions suffered by NFL players or failed to warn and protect NFL players against risks associated with concussions, including mild traumatic brain injury, Chronic Traumatic Encephalopathy and other neurological problems.

2. “Communication” means the original and every non-identical copy or reproduction of any oral discussion, document, e-mail, facsimile transmission, letter, meeting, memorandum, negotiation, telephone call, telex or any other oral or written exchange of information, between or among any person and/or entity.

3. “Concussion Litigation” refers to all underlying lawsuits filed against the NFL and/or NFL Properties alleging that the NFL and/or NFL Properties concealed and/or failed to disclose the long-term effects of concussions suffered by NFL players or failed to warn and protect NFL players against risks associated with concussions, including mild traumatic brain injury, Chronic Traumatic Encephalopathy and other neurological problems.

4. “Document” shall mean the original and every non-identical copy or reproduction of every paper or other record, regardless of origin or location, whether sent or received or made or used internally, in whatever form, that either (a) is currently or was formerly in the possession, custody or control of the NFL, (b) was prepared by or for the NFL, or (c) the NFL has seen or

otherwise knows or believes to exist. The word "Document" as used herein is defined as handwritten, printed, typed, computerized, recorded, programmed, or graphic matter of any kind of nature, however produced or reproduced, including, but not limited to, agreements, contracts, applications, letters, e-mails, correspondence, telegrams, telefaxes, wires, books of account, indices, forms, publications, guidelines, manuals, files, memoranda of all types, instructions, confirmations, invoices, calendars, diaries, desk books, schedules, reports, studies, surveys, speeches, minutes of all meetings, pamphlets, notes, records, charts, tabulations, compilations, summaries, financial statements, accounting records, interoffice and intra-office communications, transcripts, computer cards, tapes or disks, printouts, information contained in, or retrievable from computer programs, tape or other voice recordings, records of meetings, conferences, telephone conversations, or other communications, microfilm, photographs, ledgers, licenses, vouchers, bank checks, purchase orders, charge slips, hotel charges, tax returns, receipts, working papers, statistical records, delivery records, stenographers' notebooks, appointment books, timesheets and logs and any drafts of the foregoing. All drafts and non-identical copies of a document shall be considered a separate document.

5. "Employee" means any former or present employee, officer, director, agent, representative, consultant, office, committee, department, division, or group within or retained by the NFL, including those at corporate headquarters or at regional or local offices.

6. "Identify" in reference to an individual means to provide the following information: (1) the person's full name; (2) the person's present or last known employer and position; (3) the person's present or last known home and business address; and (4) the person's present or last known home and business telephone numbers.

7. “Identify” in reference to a company, partnership or other organization means to provide the following information: (1) the entity’s full name; (2) the entity’s present or last known address; and (3) the entity’s present or last known telephone number.

8. “Identify” in reference to an oral communication means to provide the following information: (1) the date of the communication; (2) the names and positions of persons involved in and/or present during the communication; and (3) a summary of the substance of the communication.

9. “Insurance Policies” (individually an “Insurance Policy”) mean any and all primary, umbrella and excess liability policies including, but not limited to, general liability insurance and commercial general liability insurance, issued by any Insurers to the NFL during the relevant time period from 1940 through 2012. For purposes of this definition, these terms shall also include any and all endorsements, declarations of insurance, riders, binders, side-bar agreements, Certificates of Insurance, amendments, and/or any other documents evidencing the existence of insurance.

10. “Insurers” means each of the insurance companies named as parties to this action as well as any other any person, corporation, association, partnership or company which is engaged in the business of insurance.

11. “Manufacturer Entities” refers to any and all entities that have designed, manufactured, sold and/or distributed equipment designed to protect or maintain the health and safety of players in the NFL.

12. “Master Complaint” refers to the Multi-District Litigation in the United States District Court for the Eastern District of Pennsylvania in the case captioned, *In Re National Football League Players’ Concussion Injury Litigation*, MDL No. 12-md-2323, United States

District Court, Eastern District of Pennsylvania (referred to herein as the “MDL”), where the individual actions in the Concussion Litigation have been consolidated for all pre-trial proceedings including discovery.

13. “Member Clubs” refers to the thirty-two individual team franchises comprising the NFL.

14. “NFL” refers to Defendant the National Football League, American Football League, as well as its predecessors, agents, employees, officers, directors, owners, principals, representatives, all attorneys and law firms and any other individuals or entities acting or purporting to act at its direction or on its behalf.

15. “NFL Properties” refers to Defendant NFL Properties, LLC, National Football League Properties, Inc., as well as its predecessors, agents, employees, officers, directors, owners, principals, representatives, all attorneys and law firms and any other individuals or entities acting or purporting to act at its direction or on its behalf.

16. “Person” and “Persons” include, but is not limited to, all natural and legal persons, partnerships, corporations (private or governmental), governmental entities (or any agency thereof, including, but not limited to, any subdivision, branch or department of any local, state or federal government), trusts, sole proprietorships, unincorporated associations and any other legal entity.

17. “Policy Term” means any term, language, provision, part, condition or covenant included in any Insurance Policy, as defined herein.

18. “Underlying Claim(s)” means all lawsuits filed or claims asserted at any time against the NFL and/or NFL Properties and/or any NFL team alleging injury to NFL players

and/or their spouses arising out of concussions or other head or brain injury or trauma including, without limitation, the claims at issue in the Master Complaint.

INSTRUCTIONS

The following instructions are applicable throughout these Requests:

1. Answer each Request separately and fully in writing and under oath. Answers should include all responsive documents known to you.

2. You are required, in responding to these Requests, to obtain and furnish all documents in your possession, custody, control or otherwise available to you or your employees, agents, representatives, officers, directors, affiliates, predecessors and successors-in-interest, subsidiaries, parents, divisions, experts, and attorneys.

3. All documents that respond, in whole or in part, to any part of any paragraph of the following Requests shall be produced in their entirety, including all attachments and enclosures.

4. If you do not have all the documents responsive to any Request, please so state and identify each entity, organization, corporation, association, partnership, company or person who you know or believe may have such documents.

5. Each Request shall be deemed to call for the production of the original document. If the original document is unavailable, then a copy shall be produced. In addition, all copies of a document shall be produced if they differ in any respect from the original.

6. The following rules of construction apply to these Requests: (a) the terms "and" or "or" shall be construed either conjunctively or disjunctively as is necessary to make these Requests inclusive rather than exclusive; (b) the terms "any" and "all" shall mean "any and all"; (c) the term "each" shall be construed to include "any and all"; (d) the singular of each term shall

be construed to include the plural and the plural shall be construed to include the singular to make the Request inclusive rather than exclusive; (e) any Request propounded in the present tense shall be read as propounded in the past tense and vice versa; (f) all verbs shall be construed to include all tenses; (g) all words used herein shall be given their plain and ordinary meanings, except that all words that you understand to have a specialized or technical meaning shall be assigned all plain and ordinary meanings as well as all specialized and technical meanings; (h) the use of the term “Insurer” or reference to any individual insurance carrier shall include that carrier or “Insurer’s” corporate affiliates, divisions, subgroups, subsidiaries, parent corporations, predecessors-in-interest, successors, assigns, agents, brokers, legal representatives, trustees, consultants, accountants, appraisers, auditors, adjusters, and all representatives acting on its behalf, and its present and former officers, directors, servants, employees, and any other individual or entity acting or purporting to act at the direction or on behalf of such carrier or “Insurer”.

7. If you are unable to answer any of these Requests completely, after exercising due diligence to secure the documents necessary to provide a complete answer, so state, and answer each such Request to the fullest extent possible. Specify the extent of your knowledge, the reasons underlying your inability to secure some or all of the documents responsive to the Request, and the efforts you made to obtain the requested documents.

8. Where an objection is interposed to any Request, state with specificity all bases and grounds for such objection.

9. With respect to any document or portion thereof withheld by counsel in the belief that the document or some portion thereof may be privileged, counsel shall produce so much of each document as does not contain any alleged privileged information and for each withheld

document (or portion thereof), identify the document and any person and entity other than a natural person associated with the document to the extent possible consistent with the privilege asserted, including: (a) the author(s) of the document; (b) the sender(s) of the document; (c) the recipient(s) of the document, including those to whom copies were exhibited at any time; (d) the person(s) now having possession of the document or copies thereof; (e) the person(s) who at any time read or reviewed the document or copies thereof; (f) the date of the document and the date it was received by person(s) now in possession of the document or writing; (g) a brief description of the nature and general subject matter of the document; and (h) the privilege asserted and the statute, rule, decision or other basis which is claimed to give rise to the privilege.

10. If any document responsive to these Requests has been lost or destroyed, explain the circumstances surrounding such disposition and identify the person directing or authorizing same, and the date(s) thereof. Identify each document by listing its author, the author's address, type (*e.g.*, letter, memorandum, e-mail, chart, etc.), date, subject matter, present location(s) and custodian(s); and state whether the document (or copies) is still in existence.

11. Each person consulted to respond to any Request shall be identified in the body of the answer to the particular Request.

12. To the extent that any proper name used herein is incorrect, it is to be construed as the correct proper name if the correct name is reasonably identifiable from the name used.

13. You are requested to produce the documents as they are kept in the usual course of business or organize and label them to correspond with the categories in the Request.

14. Pursuant to CPLR §3101(h), you are directed and required to timely amend or supplement your responses to these Requests in the circumstances where such action is required

by this and other New York Rules of Civil Procedure, including at such time that you become aware of additional documents responsive hereto after the time for compliance.

15. You are further advised that, although your answer may be complete when made, you are under a duty to amend your answer should you obtain information upon the basis of which: (a) you know that the original answer was incorrect, or (b) you know that, although the original answer was correct when made, it is no longer correct in circumstances such that a failure to amend the answer is, in substance, concealment.

16. If a complete response to any Request set forth herein requires NFL to disclose information regarding whether or not it expected or intended any bodily injury alleged in any Claim, NFL should (1) state an objection to the scope of that Request, (2) withhold the Document regarding whether or not NFL expected or intended any such injury and (3) otherwise respond to the Request in full.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Complete and accurate copies of any and all Documents reviewed or consulted in preparing the NFL's responses to Interrogatories served by any party to this action.

REQUEST NO. 2: Complete and accurate copies of each Insurance Policy under which the NFL contends it is entitled to insurance coverage in connection with the Underlying Claims, including those Insurance Policies under which the NFL contends it is covered as an additional insured.

REQUEST NO. 3: Complete and accurate copies of any and all Documents and Communications that evidence, discuss or relate to the existence of any Insurance Policies that the NFL cannot locate but which the NFL alleges were issued to the NFL and were in effect at any time from 1940 through the present, including but not limited to policies, endorsements, declarations of insurance, riders, binders, and Certificates of Insurance.

REQUEST NO. 4: Complete and accurate copies of any and all Documents and Communications between the NFL and any insurance agent or broker pertaining to the placement of insurance coverage at any time from 1940 to the present.

REQUEST NO. 5: Complete and accurate copies of any and all Documents, Communications or other tangible items upon which the NFL is relying on in its claim that the

NFL is entitled to defense and/or indemnification from any Insurer with respect to the Underlying Claim(s).

REQUEST NO. 6: Complete and accurate copies of any and all Documents and Communications that evidence, discuss or relate to a tender, notification, demand or request for insurance coverage for the Underlying Claim(s) under any of the Insurance Policies issued by any Insurer.

REQUEST NO. 7: Complete and accurate copies of any and all Documents and Communications that evidence, discuss or relate to a tender, notification, demand or request for insurance coverage to any Insurer in connection with the Underlying Claim(s).

REQUEST NO. 8: Complete and accurate copies of any and all Documents that evidence, discuss or relate to Communications between the NFL and any of its Insurers, employees, agents, consultants, representatives or anyone else acting on the NFL's behalf regarding the Underlying Claim(s), including, but specifically not limited to, those Communications discussing, or in any way related to, the NFL's efforts to seek defense and/or indemnification from any Insurer for the Underlying Claim(s).

REQUEST NO. 9: Complete and accurate copies of any and all Documents and Communications that evidence, discuss or relate to each Insurer's response to the NFL's request for insurance coverage under such Insurer's Insurance Policies, including, but not limited to, reservation of rights letters and denial letters.

REQUEST NO. 10: Complete and accurate copies of any and all Documents and Communications that evidence, discuss or relate to any Insurer's payment of defense costs to the NFL in connection with the Underlying Claim(s).

REQUEST NO. 11: Complete and accurate copies of any and all non-privileged Documents that have come into existence or into the possession of the NFL or its counsel as a result of or in connection with the Underlying Claim(s), including but not limited to all:

- (a) complaints, Short Form complaints, answers, motion papers, orders and all other pleadings filed with respect to any Underlying Claim(s);
- (b) document demands, interrogatories and all other discovery related documents served by any party to any Underlying Claim(s) and complete copies of the corresponding responses to such discovery demands prepared by or on behalf of any other party to the Underlying Claim(s);
- (c) letters, emails and all other Communications by and between counsel for the NFL and counsel for any of the underlying Claimants;
- (d) statements of representatives or employees of the NFL or any representatives or employees of any non-parties relating to the Underlying Claim(s);

- (e) any and all Documents that evidence, discuss or relate to any Communication, either written or oral, between the NFL and any other entity or person concerning a payment by the NFL to settle or resolve any Underlying Claim(s), including settlement demands, offers or proposals and the NFL's response(s) to same; and
- (f) any and all Documents that identify or evidence the time period(s) during which the former NFL player played in NFL games, the teams for which he played, all concussions or other head injuries suffered during his NFL career and all information known to the NFL regarding his alleged injuries, treatment and claimed damages.

REQUEST NO. 12: Complete and accurate copies of any and all Documents and Communications that evidence, discuss or relate to any and all costs which the NFL has incurred in connection with the Underlying Claim(s), including but not limited to attorneys' fees and expenses.

REQUEST NO. 13: Complete and accurate copies of any and all Documents that evidence, discuss or relate to the negotiation and terms of any prior or current versions of the NFL Constitution and By-Laws.

REQUEST NO. 14: Complete and accurate copies of any and all Documents that evidence, discuss or relate to the negotiation and terms of any prior or current versions of the NFL Collective Bargaining Agreements.

REQUEST NO. 15: Complete and accurate copies of any reports or other Communications prepared by any experts or consultants retained by the NFL in connection with the Claim(s), and any Communications to or from any of these experts or consultants.

REQUEST NO. 16: Any and all coverage chart(s) prepared by or for the NFL reflecting all known, potentially known, alleged, or hypothetical insurance coverage potentially available to the NFL for the Claim(s), including any primary, excess or umbrella policy.

REQUEST NO. 17: Any list or other compilation of the Claimants (including former players, their wives, and, if deceased, any executor or administrator of the former player's estate) including any descriptions of biographical information, claims and injuries.

REQUEST NO. 18: All documents reflecting the locations where any Insurance Policy identified in the NFL's responses to these requests or to interrogatories served on the NFL was accepted by the NFL, including any agents or representatives who were acting on its behalf.

REQUEST NO. 19: All documents reflecting where any Insurance Policy identified in the NFL's responses to these requests or interrogatories served upon the NFL was negotiated by the NFL and any Insurer, including any agents or representatives who were acting on behalf of any such party.

REQUEST NO. 20: All Documents reflecting the location from which insurance premiums were paid by the NFL or any agent or representative acting on the NFL's behalf, for any Insurance Policy identified in the NFL's responses to these requests or interrogatories served upon the NFL.

REQUEST NO. 21: All Documents reflecting the location to which insurance premiums were paid by the NFL or any agent or representative acting on the NFL's behalf, for any Insurance Policy identified in the NFL's responses to these requests or interrogatories served upon the NFL.

REQUEST NO. 22: All Documents reflecting the location of the subject matter of any risk for which the NFL expected to be defended or indemnified for under any Insurance Policy identified in the NFL's responses to these requests or interrogatories served upon the NFL.

REQUEST NO. 23: All articles of incorporation for the NFL and/or other documents relating to the formation, existence and organization of the NFL as an entity or association.

REQUEST NO. 24: All Documents reflecting the establishment of the domicile of the NFL from the beginning of its existence to the present.

REQUEST NO. 25: All Documents reflecting the establishment of the headquarters or principal place of business of the NFL from the beginning of its existence to the present.

REQUEST NO. 26: All Documents evidencing or reflecting any claim made by the NFL, or any agent or representative acting on the NFL's behalf, at any time between 1940 and the present under any Insurance Policy identified in the NFL's responses to these requests or the interrogatories served upon the NFL in this action.

REQUEST NO. 27: All Documents related to any joint defense and/or common counsel agreement(s) between the NFL and NFL Properties relating to the Underlying Claim(s) including, but not limited to, agreements relating to the division and/or allocation of defense costs between the NFL and NFL Properties.

REQUEST NO. 28: All bills or invoices received by the NFL for any defense costs, fees and/or expenses from any law firm that has been engaged to represent the NFL in connection with the defense of the Underlying Claim(s).

REQUEST NO. 29: All Documents evidencing, reflecting or related to attorneys' fees and/or expenses paid by the NFL to any law firm that has been engaged to represent the NFL in connection with the defense of the Underlying Claim(s).

REQUEST NO. 30: All reports, letters, legal research memoranda or other Documents or Communications received by the NFL from defense counsel in connection with the Underlying Claims.

REQUEST NO. 31: All Documents evidencing, reflecting or related to any year for which the NFL was partially or wholly self-insured.

REQUEST NO. 32: All reports or other Documents or Communications related to any mock jury exercises undertaken by the NFL or its defense counsel in connection with the Underlying Claims.

REQUEST NO. 33: All deposition transcripts taken in connection with the Concussion Litigation.

Dated: May 10, 2013

Submitted on behalf of the Insurers by:

CARROLL, McNULTY & KULL LLC



Christopher R. Carroll, Esq.
Heather E. Simpson, Esq.
Mark F. Hamilton, Esq.
570 Lexington Avenue, 10th Floor
New York, New York 10022
T: (646) 625-4000

Attorneys for Defendants
TIG Insurance Company
United States Fire Insurance Company
The North River Insurance Company

and

PUTNEY, TWOMBLY, HALL & HIRSON LLP

Thomas A. Martin, Esq.
521 Fifth Avenue
New York, New York 10175
T: (212) 682-0020

HERMES, NETBURN, O'CONNOR
& SPEARING, P.C.
Kevin J. O'Connor, Esq.
Matthew C. Kalin, Esq.
265 Franklin Street, 7th Floor
Boston, Massachusetts 02110
T: (617) 728-0052

Attorneys for Discover Property & Casualty Insurance, St. Paul Protective Insurance Company, Travelers Casualty & Surety Company, Travelers Indemnity Company of America and Travelers Property Casualty Company of America

EXHIBIT J

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DISCOVER PROPERTY & CASUALTY
COMPANY, et al.,

Plaintiffs,

-against-

NATIONAL FOOTBALL LEAGUE, NFL
PROPERTIES, LLC, et al.,

Defendants.

Index No. 652933/2012 E

Hon. Jeffrey Oing

ALTERRA AMERICA INSURANCE COMPANY,

Plaintiff,

-against-

NATIONAL FOOTBALL LEAGUE, NFL
PROPERTIES, LLC, et al.,

Defendants.

Index No. 652813/2012 E

Hon. Jeffrey Oing

**NATIONAL FOOTBALL LEAGUE'S AND NFL PROPERTIES LLC'S OBJECTIONS
AND RESPONSES TO INSURERS' SECOND SET OF DOCUMENT REQUESTS**

In accordance with CPLR 3122, Defendants/Plaintiffs-in-Counterclaim the National Football League ("NFL") and NFL Properties LLC ("NFLP") hereby object and respond as follows to Insurers' Second Omnibus Demand for Discovery and Inspection to National Football League and NFL Properties LLC, propounded by each insurance carrier party ("Requests"). These objections and responses are served without prejudice to the position of NFL and NFLP with respect to jurisdiction and justiciability. Unless a specific statement or context indicates

otherwise, the term “NFL” in these objections and responses shall be understood to include both the NFL and NFLP.

Objections to Definitions and Instructions and General Objections

The following objections to definitions and instructions and General Objections (together, the “General Objections”) are incorporated in full in response to each individual Request set forth below. Neither the failure to assert any General Objection or portion thereof in response to an individual Request, nor the statement of portions of the General Objections, or of similar objections, or additional objections, in response to individual Requests, waives any of the NFL’s General Objections to each Request.

1. NFL objects to the Definitions and Instructions to the extent that they seek to impose requirements or obligations on NFL or NFLP in addition to or different from those imposed by CPLR 3120, the Rules of the Commercial Division (Section 202.70 of the Uniform Rules for the Trial Courts), the June 8, 2007 Statement of the Administrative Judge Regarding Implementation of Certain Rules of the Commercial Division, and/or the Practices and Procedures of Part 48 (collectively, “the Rules”).

2. NFL objects to the definition of “Claimants” to the extent that its reference to “any person” is meant to encompass persons other than the persons referred to in the definition as the “plaintiffs” in “the Head Trauma Litigation.”

3. NFL objects to the definition of “Insurance Policies” to the extent that it seeks specialty liability insurance policies or any other insurance policies that are not the subject of this litigation.

4. NFL objects to the definition of “Insurers” on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it includes any person “engaged in the business of insurance.”

5. NFL objects to the definition of “NFL” on the grounds that it seeks privileged or otherwise protected materials, seeks materials not in NFL’s possession, custody, or control, and is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

6. NFL objects to the definition of “NFL Properties” on the grounds that it seeks privileged or otherwise protected materials, seeks materials not in NFL Properties’ possession, custody, or control, and is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

7. NFL objects to the definition of “Member Clubs” on the grounds that it seeks privileged or otherwise protected materials, seeks materials not in NFL’s or NFL Properties’ possession, custody, or control, and is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

8. NFL objects to Instruction 2 to the extent that it requires NFL to obtain and produce “all” documents in its possession, custody, or control on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. NFL further objects to Instruction 2 to the extent that it purports to require NFL to obtain and produce documents not in NFL’s possession, custody, or control. Where NFL agrees, in response to a Request, to obtain and review documents, NFL agrees only to conduct a reasonably diligent search of documents in its possession, custody, or control. Unless specifically stated otherwise or separately agreed by the parties, a “reasonably diligent search”

shall mean either (a) a search of the location(s) where responsive documents are reasonably likely to be found, or (b) the collection of electronically stored information and hard-copy documents from agreed custodians only, and, with respect to electronically stored information, the review of only that portion of collected information captured by reasonable search terms to be negotiated by the parties.

9. NFL objects to Instructions Nos. 5, 8, 10, 11, 12, and 13 to the extent that they seek to impose requirements or obligations on NFL in addition to or different from those imposed by the Rules. NFL further objects to Instruction No. 10 to the extent that it is inconsistent with the method for identification (including logging) of privileged or protected documents and information to be agreed after the meet-and-confer ordered in the November 14, 2016 Case Management Order ¶ (3)(b).

10. NFL objects to Instruction No. 17 on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. NFL is not undertaking to search for or produce documents generated after the underlying litigation was initiated on July 19, 2011, or documents that came into NFL's possession after July 19, 2011, unless specifically indicated otherwise in these following responses or separately agreed by the parties.

11. NFL objects to the Requests to the extent that they seek information that is not relevant, and to the extent they are overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague and ambiguous, fail to identify the categories of information or documents requested with reasonable particularity, or seek information or documents protected from disclosure by the attorney-client privilege, the work-product doctrine,

or any other immunity or privilege. Nothing in NFL's responses is intended as, constitutes, or should be deemed a waiver of any applicable privilege, doctrine, or immunity.

12. NFL objects to the Requests to the extent that they seek information protected by one or more Non-Litigation Confidentiality Agreements that NFL has entered with certain of the Insurers, as described in the May 22, 2013 Stipulation and Order for the Production and Exchange of Confidential Information ¶ 16. NFL will not at this time produce information or documents that were, when created, made subject to such Non-Litigation Confidentiality Agreements. NFL, however, is prepared to confer with the Insurers regarding procedures for the production, as appropriate in light of the objections and responses contained herein, of such information or documents in a manner that is consistent with the non-disclosure, non-waiver, use, and any other limitations set forth in the Non-Litigation Confidentiality Agreements.

13. NFL objects to the Requests to the extent that they seek information or documents not in NFL's possession, custody, or control; information or documents in the possession, custody, or control of the Insurers; information or documents as readily available to the Insurers as to NFL; or information or documents obtainable from other sources or through other means of discovery that are more convenient, more efficient, more practical, less burdensome, and/or less expensive.

14. NFL objects to the Requests to the extent that they seek disclosure of information or documents protected by any confidentiality or nondisclosure agreement, protective order, or other confidentiality requirement. Without limitation to the foregoing, NFL will not at this time produce information or documents that are subject to non-litigation confidentiality agreements entered into with certain of its insurers.

15. NFL objects to the Requests to the extent that they seek disclosure of confidential settlement information, communications, or documents protected by confidentiality agreements, court order, or applicable State and Federal law or procedural rules.

16. NFL objects to the Requests to the extent that, as worded, they assume that documents exist. NFL's agreement to provide a response, produce, or object to producing any particular category of document(s) is not a representation that such document(s) in fact exist.

17. NFL reserves the right to amend or supplement any or all of their objections or responses at any time as NFL deems necessary or appropriate in light of information or knowledge obtained during the course of discovery in this proceeding.

Specific Objections and Responses

Without waiving or restricting any of its General Objections and expressly incorporating each General Objection, NFL objects and responds as follows to the individual Requests:

REQUEST NO. 1: All Documents that You stated would be produced in Your responses to the Insurers' First Omnibus Set of Document Requests or any Insurer's individual document requests that You have not yet produced.

RESPONSE: Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, any documents that it stated it would produce in its responses to the Insurers' First Omnibus Set of Document Requests or any Insurer's individual document requests, to the extent not previously produced.

REQUEST NO. 2: All Insurance Policies issued to You (or otherwise providing coverage to You) that You have not previously produced, including any Insurance Policies issued by a Captive Insurer.

RESPONSE: NFL objects to this Request insofar as it requests “all” insurance policies of any kind on the grounds that it seeks insurance policies that are not material and necessary in the prosecution or defense of this action and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, copies of all general liability policies located to date that were issued prior to January 1, 2013, and that were issued to, or provide coverage to, NFL, to the extent not previously produced in response to the Insurers’ First Omnibus Set of Document Requests.

REQUEST NO. 3: All Insurance Policies issued to (or otherwise providing coverage to) NFL Europe, NFL Europa League, World League of American Football, World League of Georgia, Inc. or NFL Europe Florida, Inc.

RESPONSE: NFL objects to this Request insofar as it requests copies of insurance policies that were issued to, or provide coverage to, entities other than NFL, on the grounds that it seeks insurance policies that are not material and necessary in the prosecution or defense of this action, and, thus, is overbroad and unduly burdensome. NFL also objects to this Request insofar as it requests “all” insurance policies of any kind on the grounds that it seeks insurance policies that are not material and necessary in the prosecution or defense of this action and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, copies of all general liability policies located to date that were issued prior to January 1, 2013, and that were issued to, or provide coverage to, NFL—which policies may also provide coverage to NFL Europe, NFL Europa League, World League of American Football, World League of Georgia, Inc. or NFL Europe Florida, Inc.—to the extent not previously produced in response to the Insurers’ First Omnibus Set of Document Requests.

REQUEST NO. 4: All Communications with any Insurer relating to Alleged Brain Injury, the Head Trauma Litigation, or the Class Action Settlement, including but not limited to Communications regarding notice of the Head Trauma Litigation, the terms of the Class Action Settlement, the valuation of the Class Action Settlement, or the Insurer's consent to the Class Action Settlement, and any related Documents.

RESPONSE: NFL objects to this Request insofar as it requests "all" such communications on the grounds that it seeks communications already in the possession, custody, or control of the Insurers, and on the grounds that it seeks communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected communications between NFL and its Insurers relating to the underlying litigation for which NFL seeks coverage in this action, or relating to the class action settlement of such claims, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 5: All Communications between You and any Insurer or insurance broker relating to the existence, purchase, terms, or negotiation of insurance that would cover claims for Alleged Brain Injury and any related Documents, including but not limited to any Communications or Documents concerning exclusions from coverage for neurological injuries.

RESPONSE: NFL objects to this Request insofar as it requests "all" such communications on the grounds that it seeks communications already in the possession, custody, or control of the Insurers, and on the grounds that it seeks communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected communications between NFL

and insurance brokers, and between NFL and its Insurers, concerning the placement of general liability insurance policies at issue in this litigation, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 6: All Documents and Communications related to the existence of, terms of, or efforts to locate any insurance policies that You allege any Insurer issued to You for which a complete copy of such policy has not been located to date.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications already in the possession, custody, or control of the Insurers, and on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents and communications related to the existence of, terms of, or efforts to locate any general liability insurance policies at issue in this litigation for which a complete copy of such policy has not been located to date, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 7: All Documents and Communications relating to the existence of any Captive Insurer or Captive Insurance program created, established, or otherwise used by You at any time from 1920 to the present, including but not limited to incorporation papers, mission statements, guidelines, bylaws, policies, or procedures.

RESPONSE: NFL objects to this Request insofar as it requests "all" documents and communications relating to the "existence" of "any" Captive Insurer or Captive Insurance program "at any time from 1920 to the present" on the grounds that it seeks documents and

communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents and communications relating to any captive insurer or captive insurance program that may have been created, established, or otherwise used by NFL providing general liability insurance that would provide coverage for the underlying litigation.

REQUEST NO. 8: All Insurance Policies under which You assert entitlement to coverage for the Head Trauma Litigation or the Class Action Settlement as an additional insured or additional named insured.

RESPONSE: NFL objects to this Request insofar as it requests “all” insurance policies on the grounds that it seeks insurance policies already in the possession, custody, or control of the Insurers and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, copies of all general liability policies located to date that it contends entitle NFL to coverage in this litigation and that were issued to, or provide coverage to, NFL, including as an additional insured or additional named insured, to the extent not previously produced in response to the Insurers’ First Omnibus Set of Document Requests.

REQUEST NO. 9: All invoices relating to payments made or costs incurred by the NFL in connection with the Head Trauma Litigation or Class Action Settlement for which the NFL seeks reimbursement from the Insurers and all Documents reflecting payment of such invoices by the NFL.

RESPONSE: NFL objects to this Request insofar as it requests “all” such invoices and documents on the grounds that it seeks invoices and documents already in the possession,

custody, or control of the Insurers, and on the grounds that it seeks invoices and documents that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents sufficient to show the costs for which NFL intends to seek recovery in this action, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 10: All invoices relating to payments made or costs incurred by NFL Properties in connection with the Head Trauma Litigation or Class Action Settlement for which NFL Properties seeks reimbursement from the Insurers and all Documents reflecting payment of such invoices by NFL Properties.

RESPONSE: NFL objects to this Request insofar as it requests "all" such invoices and documents on the grounds that it seeks invoices and documents already in the possession, custody, or control of the Insurers, and on the grounds that it seeks invoices and documents that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents sufficient to show the costs for which NFL intends to seek recovery in this action, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 11: All Documents and Communications related to reimbursement of any amounts included within Requests No. 9 & 10 received by You from the Insurers or any other Person(s).

RESPONSE: NFL objects to this Request insofar as it requests “all” such documents and communications, including documents and communications “received . . . from the Insurers,” on the grounds that it seeks documents and communications already in the possession, custody, or control of the Insurers, and on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents sufficient to show any Insurer’s payment of costs to NFL in connection with the underlying litigation, to the extent not previously produced in response to the Insurers’ First Omnibus Set of Document Requests.

REQUEST NO. 12: All Documents and Communications related to any amounts claimed, recovered, or paid on Your behalf in connection with the Head Trauma Litigation or the Class Action Settlement under any insurance policy issued to You or any related entity, including but not limited to any Documents evidencing the damages alleged in your answers to Interrogatories Nos. 16 and 17 in the Insurers’ Second Omnibus Set of Interrogatories.

RESPONSE: NFL objects to this Request insofar as it seeks “all” such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents sufficient to show the costs for which NFL intends to seek recovery in this action, to the extent not previously produced in response to the Insurers’ First Omnibus Set of Document Requests.

REQUEST NO. 13: All Documents relating to the division or allocation between the NFL, NFL Properties and any other Person of defense costs and expenses incurred in the Head Trauma Litigation or the payment of any judgments or settlements related to the Head Trauma Litigation.

RESPONSE: NFL objects to this Request insofar as it seeks “all” such documents on the grounds that it seeks documents that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents evidencing any agreements, between NFL and NFLP, relating to the division and/or allocation of defense costs and expenses incurred in connection with, or the payment of any judgments or settlements related to, the underlying litigation for which NFL seeks coverage in this action, to the extent not previously produced in response to the Insurers’ First Omnibus Set of Document Requests.

REQUEST NO. 14: All Communications by or to You, or by or to any Member Clubs, relating to insurance coverage for concussions or other head injuries, Alleged Brain Injury, the Head Trauma Litigation, or the Class Action Settlement, including all related Documents.

RESPONSE: NFL objects to this Request insofar as it requests “all” such communications, including “all” such communications “by or to any Member Clubs” not involving NFL, on the grounds that it seeks communications not in the possession, custody, or control of NFL, and on the grounds that it seeks communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected communications by or to NFL relating to insurance coverage for the potential long-term effects or risks of head trauma sustained in

football, or the underlying litigation and class action settlement for which NFL seeks coverage in this action, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 15: All Documents relating to the business or financial relationship between You and the Member Clubs.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents, on the grounds that it seeks documents that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce copies of the current and prior versions of NFL's Constitution and Bylaws, to the extent located after a reasonably diligent search; NFL Properties, Inc.'s articles of incorporation; NFLP's Certificate of Formation; and the Closing Binder for the merger of National Football League Properties, Inc. and NFLP, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 16: All Documents and Communications relating to the allocation of financial responsibility for liabilities incurred by You as between You and the Member Clubs.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce copies of the current and prior versions of NFL's Constitution and Bylaws, to the extent located are a reasonably diligent search; NFL Properties, Inc.'s articles of incorporation; NFLP's

Certificate of Formation; and the Closing Binder for the merger of National Football League Properties, Inc. and NFLP, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 17: All Documents and Communications relating to the allocation of financial responsibility for liabilities as between NFL and NFL Properties.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce copies of the current and prior versions of NFL's Constitution and Bylaws, to the extent located after a reasonably diligent search; NFL Properties, Inc.'s articles of incorporation; NFLP's Certificate of Formation; and the Closing Binder for the merger of National Football League Properties, Inc. and NFLP, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO 18: All Documents and Communications relating to the business or financial relationship between You and NFL Europe, NFL Europa League, World League of American Football, World League of Georgia, Inc. or NFL Europe Florida, Inc.

RESPONSE: NFL objects to this Request on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and, thus, is overbroad and unduly burdensome.

REQUEST NO. 19: All organizational charts of the NFL and NFL Properties, respectively, since 2007.

RESPONSE: Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, documents sufficient to show the general organizational structure of NFL or NFLP since 2007 to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 20: All Documents relating to the formation of the NFL and NFL Properties, respectively, and all amendments or revisions to such Documents.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents on the grounds that it seeks documents that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce copies of the current and prior versions of NFL's Constitution and Bylaws, to the extent located after a reasonably diligent search; NFL Properties, Inc.'s articles of incorporation; NFLP's Certificate of Formation; and the Closing Binder for the merger of National Football League Properties, Inc. and NFLP, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 21: All lists, databases, compilations, or spreadsheets maintained by You containing data about former NFL football players, including but not limited to name, date of birth, dates of NFL career, team(s) played for, concussions or Alleged Brain Injuries sustained, or any similar information.

RESPONSE: NFL objects to this Request insofar as it requests "all" such lists, databases, compilations, or spreadsheets on the grounds that it seeks lists, databases, compilations, and spreadsheets that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections,

NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected lists or spreadsheets maintained by NFL sufficient to show the names, dates of birth, dates of play, teams played for of, and/or, to the extent available, any concussions or brain injury allegedly sustained by, former NFL football players asserting claims for which NFL seeks coverage in this action, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 22: All lists, databases, compilations, or spreadsheets maintained by You containing data about former players in NFL Europe, NFL Europa League, World League of American Football, World League of Georgia, Inc. or NFL Europe Florida, Inc., including but not limited to name, date of birth, dates of career, team(s) played for, concussions or Alleged Brain Injuries sustained, or any similar information.

RESPONSE: NFL objects to this Request insofar as it requests "all" such lists, databases, compilations, or spreadsheets on the grounds that it seeks lists, databases, compilations, and spreadsheets that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected lists or spreadsheets maintained by NFL sufficient to show the names, dates of birth, dates of play, teams played for of, and/or, to the extent available, any concussions or brain injury allegedly sustained by, former football players in NFL Europe, NFL Europa League, World League of American Football, World League of Georgia, Inc. or NFL Europe Florida, Inc. asserting claims for which NFL seeks coverage in this action, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 23: All lists, databases, compilations, or spreadsheets maintained by You containing data identifying which former NFL players participated in Super Bowl or Pro Bowl games for each year since 1970.

RESPONSE: NFL objects to this Request insofar as it requests “all” such lists, databases, compilations, or spreadsheets on the grounds that it seeks lists, databases, compilations, or spreadsheets that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected lists or spreadsheets maintained by NFL, to the extent available, sufficient to identify which former NFL football players asserting claims for which NFL seeks coverage in this action participated in Super Bowl or Pro Bowl games for each year from 1970 to 2012, to the extent not previously produced in response to the Insurers’ First Omnibus Set of Document Requests.

REQUEST NO. 24: All information captured by the NFL Injury Surveillance System from inception through February 13, 2015, and all related Documents and Communications discussing any information recorded in the NFL Injury Surveillance System.

RESPONSE: NFL objects to this Request insofar as it requests “all” such information, including information captured, and “all” related documents and communications, on the grounds that it seeks information, documents, and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected reports of information captured by the NFL Injury Surveillance System relating to concussions or brain injury received by NFL in the

regular course of its business on or before August 1, 2012, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 25: All injury reports relating to an NFL player made to the media or general public by You or by any Member Club before February 14, 2015.

RESPONSE: NFL objects to this Request insofar as it requests "all" injury reports on the grounds that it seeks injury reports that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. NFL further objects to this Request insofar as it requests any injury reports made "by any Member Club" on the grounds that it seeks injury reports not in the possession, custody, or control of NFL. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, official injury reports periodically provided by NFL to the media generated on or before August 1, 2012, relating to concussions or brain injury allegedly sustained by former NFL football players asserting claims for which NFL seeks coverage in this action, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 26: All Documents and Communications relating to any concussion, head trauma, or Alleged Brain Injury suffered by any NFL player prior to February 14, 2015.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications, including documents and communications after August 1, 2012, on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-

privileged, non-protected documents and communications generated on or before August 1, 2012, relating to concussions, head trauma, or brain injury allegedly sustained by former NFL football players asserting claims for which NFL seeks coverage in this action, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 27: All Documents and Communications relating to any workers compensation claim for Alleged Brain Injury filed by a former NFL player.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications, none of which would have been filed against NFL, on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. NFL further objects to this Request on the grounds that NFL players are not employees of NFL and that the requested documents and communications may not be in the possession, custody, or control of NFL.

REQUEST NO. 28: All Documents and Communications relating to evaluation and settlement of the Head Trauma Litigation, including but not limited to evaluation of the NFL's and NFL Properties' potential liability (respectively) or the reasonableness of the Class Action Settlement and Communications with Your personnel, with Member Clubs, or with Persons with ownership interests in Member Clubs relating to the merits of the Class Action Settlement.

RESPONSE: NFL objects to this request insofar as the class action settlement was determined to be a fair, reasonable, and adequate compromise by a federal court, which determination was affirmed on appeal in an order that the U.S. Supreme Court declined to review, and documents relating to the settlement are thus not material and necessary in the prosecution or defense of this action and the request is thus overbroad and unduly burdensome. NFL further objects to this Request insofar as it requests "all" such documents and fails to

identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. NFL further objects to this Request insofar as it seeks disclosure of any confidential settlement information or communications protected by confidentiality agreements or applicable State and Federal law, court order, or procedural rules. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents and communications filed in support of the class action settlement sufficient to show the reasonableness of the settlement of the underlying litigation for which NFL seeks coverage in this action, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 29: All Documents and Communications relating to the Head Trauma Litigation or Class Action Settlement, including but not limited to: (a) All Communications between You (including Your attorneys) and any Claimant or Claimant's attorney; (b) All mediation statements or submissions by any party; (c) All written demands, offers or proposals made by You or the Claimants, and all Documents related to or discussing oral demands, offers, or proposals; (d) All proposals made by a mediator, and all Documents related to or discussing such proposals; (e) All Communications exchanged between You and any Insurer relating to the Class Action Settlement; (f) All drafts of the Class Action Settlement agreement; (g) All reports, affidavits, declarations, letters or other Documents authored by any of Your experts or consultants relating to the Class Action Settlement; (h) All reports, affidavits, declarations, letters or other Documents authored by any the Claimants' or Objectors' experts or consultants in connection with the Class Action Settlement; (i) All Documents filed in support of or against preliminary approval or final approval of the Class Action Settlement; (j) All Documents filed in the Appeal; (k) All Communications between You (including Your attorneys) and any Person authorized to administer the Class Action Settlement or any Special Master appointed in connection with the Head Trauma Litigation or the Class Action Settlement; and (l) All Documents and Communications related to claims for compensation under the Class Action Settlement, including but not limited to all submitted claim forms and all records of payment.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly

burdensome. NFL further objects to this Request insofar as it seeks disclosure of any confidential settlement information or communications protected by confidentiality agreements or applicable State and Federal law, court order, or procedural rules. NFL objects to this request insofar as the class action settlement was determined to be a fair, reasonable, and adequate compromise by a federal court, which determination was affirmed on appeal in an order that the U.S. Supreme Court declined to review, and documents relating to the settlement are thus not material and necessary in the prosecution or defense of this action and the request is thus overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds as follows with respect to each subpart of this Request:

(a) NFL objects to the production of all communications between NFL and any claimant or claimant's attorney on the grounds that all such communications are not material and necessary in the prosecution or defense of this action and, thus, such production is overbroad and unduly burdensome;

(b) NFL objects to the production of mediation statements or submissions by any party on the ground that such mediation statements or submissions are confidential settlement information or communications protected by confidentiality agreements or applicable State and Federal law, court order, or procedural rules;

(c) NFL objects to the production of written demands, offers or proposals made by NFL or the claimants, or documents related to or discussing oral demands, offers, or proposals on the ground that such written demands, offers or proposals made by NFL or the claimants are not material and necessary in the prosecution or defense of this action and are confidential settlement information or communications protected by confidentiality agreements or applicable State and Federal law, court order, or procedural rules;

(d) NFL objects to the production of proposals made by a mediator, or documents related to or discussing such proposals on the ground that such proposals made by a mediator are not material and necessary in the prosecution or defense of this action and are confidential settlement information or communications protected by confidentiality agreements or applicable State and Federal law, court order, or procedural rules;

(e) NFL will produce, after a reasonably diligent search, non-privileged, non-protected communications exchanged between NFL and any Insurer relating to the class action settlement;

(f) NFL objects to the production of drafts of the class action settlement agreement on the ground that such drafts are not material and necessary in the prosecution or defense of this action;

(g) NFL will produce, after a reasonably diligent search, all publicly filed reports, affidavits, declarations, letters or other documents authored by any of NFL's experts or consultants relating to the class action settlement;

(h) NFL will produce, after a reasonably diligent search, all reports, affidavits, declarations, letters or other documents authored by any the claimants' or objectors' experts or consultants in connection with the class action settlement that are in the possession, custody, or control of NFL;

(i) NFL will produce, after a reasonably diligent search, all documents filed in support of or against preliminary approval or final approval of the class action settlement;

(j) NFL will produce, after a reasonably diligent search, all documents filed in the appeal;

(k) NFL objects to the production of all communications between NFL and any person authorized to administer the class action settlement or any special master appointed in

connection with the underlying litigation or the class action settlement on the grounds that all such communications are not material and necessary in the prosecution or defense of this action and, thus, such production is overbroad and unduly burdensome; and

(l) NFL will produce, after a reasonably diligent search, all submitted claim forms, which shall be subject to any restrictions and protections imposed by the federal district court, and all records of payment.

REQUEST NO. 30: All Documents and Communications related to Your understanding, on or before February 13, 2015, of the development of the neurological conditions compensated by the Class Action Settlement, including but not limited to all Documents reviewed, relied upon, or considered in connection with the Class Action Settlement by You (including Your attorneys and experts) that concern the causation, disease mechanisms, development, manifestation, progression, or treatment of any of the compensated conditions.

RESPONSE: NFL objects to this Request insofar as it requests “all” such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. NFL further objects to this request to the extent it fails to define the terms “causation,” “disease mechanisms,” “development,” “manifestation,” “progression,” or “treatment” as it relates to the “compensated conditions.” NFL further objects to this Request insofar as it seeks disclosure of any confidential settlement information or communications protected by confidentiality agreements or applicable State and Federal law, court order, or procedural rules. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents filed in support of the class action settlement, to the extent not previously produced in response to the Insurers’ First Omnibus Set of Document Requests.

REQUEST NO. 31: All Communications between You and any Manufacturer Entities relating to concussions, Alleged Brain Injuries, the Head Trauma Litigation, or Class Action Settlement, including any related Documents.

RESPONSE: NFL objects to this Request insofar as it requests “all” such communications, including communications after July 19, 2011, on the grounds that it seeks communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected communications generated on or before July 19, 2011, between NFL and any helmet manufacturers relating to the potential long-term effects or risks of head trauma sustained in football or to the underlying litigation or settlement for which the NFL seeks coverage in this action, to the extent not previously produced in response to the Insurers’ First Omnibus Set of Document Requests.

REQUEST NO. 32: All contracts between You and any Manufacturer Entity, including but not limited to any agreement to indemnify or hold harmless the NFL or NFL Properties.

RESPONSE: NFL objects to this Request, including insofar as it requests “all” such contracts, including agreements to indemnify or hold harmless NFL for liabilities unrelated to the underlying litigation for which NFL seeks coverage in this action, on the grounds that it seeks contracts that are not material and necessary in the prosecution or defense of this action and, thus, is overbroad and unduly burdensome.

REQUEST NO. 33: All Communications between You and the National Football League Players Association or any of its officers or agents related to concussions, head injuries, Alleged Brain Injuries, the Head Trauma Litigation, or the Class Action Settlement, including any related Documents.

RESPONSE: NFL objects to this Request insofar as it requests “all” such communications, including communications after July 19, 2011, on the grounds that it seeks communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected communications generated on or before July 19, 2011, between NFL and the National Football League Players Association or any of its officers or agents relating to the potential long-term effects or risks of head trauma sustained in football or to the underlying litigation or settlement for which the NFL seeks coverage in this action, to the extent not previously produced in response to the Insurers’ First Omnibus Set of Document Requests.

REQUEST NO. 34: All Documents and Communications relating to any governmental inquiry, investigation, or discussion of alleged misleading claims regarding prevention or treatment of concussions, including but not limited to Communications between You and the United States Congress or the Federal Trade Commission or any of their members, officers, employees, or agents, and any related Documents.

RESPONSE: NFL objects to this Request insofar as it requests “all” such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents and communications generated on or before July 19, 2011, relating to any governmental inquiry or investigation of alleged misleading claims regarding prevention or treatment of concussions, to the extent not previously produced in response to the Insurers’ First Omnibus Set of Document Requests.

REQUEST NO. 35: All Documents and Communications relating to any efforts by You to seek participation in or contribution to the Class Action Settlement from any other potentially responsible tortfeasors.

RESPONSE: NFL objects to this Request, including insofar as it seeks “all” such documents and communications, on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome.

REQUEST NO. 36: All Documents and Communications relating to any indemnity agreements (whether memorialized in a stand-alone Document or as part of a larger Document) between You and the Member Clubs or Your pursuit of defense or indemnification from any Member Club(s) in connection with the Head Trauma Litigation, the Class Action Settlement or any other lawsuit.

RESPONSE: NFL objects to this Request because it implies that the NFL has any right of indemnification against Member Clubs; the NFL is an unincorporated association the members of which are the 32 Member Clubs. NFL refers Insurers to the NFL’s Constitution and Bylaws.

REQUEST NO. 37: A current list of all Opt-Outs, including full name, date of birth, dates of NFL career, team(s) played for, Alleged Brain Injuries and any concussions or other head injuries.

RESPONSE: Subject to and without waiving its objections, NFL directs the Insurers to the list of individuals who opted out of the class action settlement available at <https://www.nflconcussionsettlement.com>.

REQUEST NO. 38: All Communications between You and any Objector or Opt-Out or his or her counsel, including any discussion of settling the claims of any Objector or Opt-Out, and all related Documents.

RESPONSE: NFL objects to this Request insofar as it requests “all” such communications on the grounds that it seeks communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. NFL further objects to this request insofar as the class action settlement was determined to be a fair, reasonable, and adequate compromise by a federal court, which determination was affirmed on appeal in an order that the U.S. Supreme Court declined to review, and documents relating to the settlement are thus not material and necessary in the prosecution or defense of this action and the request is thus overbroad and unduly burdensome. NFL also objects to this Request insofar as it seeks communications specifically concerning the settlement of the claims of any former NFL player(s) who opted out of the class action settlement on the grounds that the Request is premature.

REQUEST NO. 39: All analyses or evaluations of the potential value of the Opt-Outs’ claims prepared by or for You.

RESPONSE: NFL objects to this Request, including insofar as it requests “all” analyses and evaluations, on the grounds that it seeks communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. NFL further objects to this Request on the grounds that it seeks documents and communications protected from disclosure by the attorney-client privilege and/or the work-product doctrine.

REQUEST NO. 40: All Documents and Communications prepared by You or any other Person on Your behalf relating to the timing and amount of benefits anticipated to be paid under the Class Action Settlement.

RESPONSE: NFL objects to this Request insofar as it requests “all” such documents and communications, on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL refers Insurers to the documents memorializing the class action settlement on the public docket in the underlying litigation, including the Class Action Settlement Agreement and the Report of the Segal Group to Special Master Perry Golkin.

REQUEST NO. 41: All Documents and Communications relating to Your satisfaction of Your payment obligations under the Class Action Settlement.

RESPONSE: NFL objects to this Request insofar as it requests “all” such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents and communications sufficient to show the amounts it has paid under the class action settlement.

REQUEST NO. 42: All Documents and Communications relating to Your first knowledge of every claim and potential claim related to Alleged Brain Injury sustained by each former NFL player, including but not limited to any notice, claim or request for assistance or benefits made to You under any NFL program prior to commencement of the Head Trauma Litigation.

RESPONSE: NFL objects to this Request insofar as it requests “all” such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents sufficient to show NFL’s first knowledge of claims for benefits made on or before August 1, 2011, under the Bert Bell/Pete Rozelle NFL Player Retirement Plan or the 88 Plan, which claims for benefits involved alleged brain injury, to the extent not previously produced in response to the Insurers’ First Omnibus Set of Document Requests.

REQUEST NO. 43: All Documents and Communications relating to disability claims of any former NFL players relating to Alleged Brain Injury and any subsequent appeals, including those of former NFL player Mike Webster.

RESPONSE: NFL objects to this Request insofar as it requests “all” such documents and communications, including documents and communications after August 1, 2011, on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents relating to disability claims of former NFL players relating to alleged brain injury and subsequent appeals, including those of former NFL player Mike Webster, made on or before August 1, 2011, to the extent not previously produced in response to the Insurers’ First Omnibus Set of Document Requests.

REQUEST NO. 44: All Documents and Communications relating to any former NFL player's claim for benefits under the Bert Bell/Pete Rozelle NFL Player Retirement Plan or any Collective Bargaining Agreement that involves any Alleged Brain Injury.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications, including all documents and communications regarding any former NFL player's claim for benefits after, August 1, 2011, on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. NFL further objects to this Request insofar as it requests documents and communications from the Bert Bell/Pete Rozelle NFL Player Retirement Plan on the grounds that it seeks documents and communications that are not in the possession, custody, or control of NFL. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents relating to claims for benefits made on or before August 1, 2011, under the Bert Bell/Pete Rozelle NFL Player Retirement Plan or the 88 Plan, which claims for benefits involved alleged brain injury, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 45: All Documents and Communications relating to the November 1, 1998 amendment to the governing documents of the Bert Bell/Pete Rozelle NFL Player Retirement Plan that added language relating to awards of benefits for a "psychological/psychiatric disorder" that was "caused by or relates to a head injury (or injuries) sustained by a player arising out of League football activities (e.g., repetitive concussions)."

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly

burdensome. NFL further objects to this Request insofar as it seeks documents and communications from the Bert Bell/Pete Rozelle NFL Player Retirement Plan on the grounds that such documents and communications are not in the possession, custody, or control of NFL. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected responsive documents generated on or before July 19, 2011, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 46: All Documents and Communications relating to the Alleged Brain Injuries or deaths of former NFL players including but not limited to Merrill Hoge, Mike Webster, Justin Strzelczyk, Terry Long, Andre Waters, Dave Duerson, and Junior Seau, including any related litigation against You, the Member Clubs, or any of Your or the Member Clubs' medical, training or other professional personnel.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications, including all documents and communications after August 1, 2011, on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. NFL further objects to this Request insofar as it requests documents and communications from "Member Clubs" or any of "Member Clubs' medical, training, or other professional personnel" on the grounds that such documents and communications are not in the possession, custody, or control of NFL. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents generated on or before August 1, 2011, relating to the alleged brain injuries or deaths of Merrill Hoge, Mike Webster, Justin Strzelczyk, Terry Long, Andre Waters, Dave Duerson, and Junior Seau, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 47: All Documents and Communications relating to the treatment of concussions or Alleged Brain Injuries by Member Clubs or their medical, training, or other professional staffs.

RESPONSE: NFL objects to this Request insofar as it requests “all” such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. NFL further objects to this Request insofar as it requests documents and communications from “Member Clubs or their medical, training, or other professional staffs” on the grounds that most such documents and communications would not be in the possession, custody, or control of NFL. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents generated on or before July 19, 2011, relating to Member Clubs’ treatment of concussions or brain injuries allegedly sustained by former NFL football players asserting claims for which NFL seeks coverage in this action, to the extent not previously produced in response to the Insurers’ First Omnibus Set of Document Requests.

REQUEST NO. 48: All Documents and Communications relating to the formation of the NFL Injury & Safety Panel.

RESPONSE: NFL objects to this Request insofar as it requests “all” such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. NFL further objects to this Request to the extent it seeks documents and

communications that are not in the possession, custody, or control of NFL. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents and communications generated on or before July 19, 2011, sufficient to show the timing and reasons for the formation of the NFL Injury & Safety Panel, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 49: All Documents and Communications relating to the formation of the MTBI Committee or the Head, Neck and Spine Medical Committee, including but not limited to the reasons for their formation.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. NFL further objects to this Request to the extent it seeks documents and communications that are not in the possession, custody, or control of NFL. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents and communications generated on or before July 19, 2011, sufficient to show the timing and reasons for the formation of the MTBI Committee and the Head, Neck and Spine Medical Committee, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 50: All Documents and Communications relating to the appointment or removal of each member of the MTBI Committee and its successors.

RESPONSE: NFL objects to this Request insofar as it requests “all” such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. NFL further objects to this Request to the extent it seeks documents and communications that are not in the possession, custody, or control of NFL. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents and communications generated on or before July 19, 2011, sufficient to show the timing and reasons for the appointment and removal of each member of the MTBI Committee and its successors, to the extent not previously produced in response to the Insurers’ First Omnibus Set of Document Requests.

REQUEST NO. 51: All Documents and Communications generated by, sent to, reviewed by, maintained by, or mentioning the NFL Injury & Safety Panel, including but not limited to agendas, minutes, presentations, transcripts, notes or other Documents.

RESPONSE: NFL objects to this Request insofar as it requests “all” such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. NFL further objects to this Request to the extent it seeks documents and communications that are not in the possession, custody, or control of NFL. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents and communications generated on or before July 19, 2011, relating to the NFL Injury & Safety Panel’s discussion, consideration, evaluation, or study of the potential long-term effects or risks of head trauma sustained in football, to the

extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 52: All Documents and Communications relating to payments made in connection with the NFL Injury & Safety Panel, the MTBI Committee, any of their successors, or any of their officers or members, including but not limited to budgets, invoices, contracts, or records of payment.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. NFL further objects to this Request to the extent it seeks documents and communications that are not in the possession, custody, or control of NFL. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents and communications generated on or before July 19, 2011, sufficient to show the compensation (if any) of, or payments (if any) to, the members of the NFL Injury & Safety Panel, the MTBI Committee, or any of its successors, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 53: All Documents and Communications generated by, sent to, reviewed by, maintained by, or mentioning the MTBI Committee, including but not limited to agendas, minutes, presentations, transcripts, studies or other research findings, notes or other Documents.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the

requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. NFL further objects to this Request to the extent it seeks documents and communications that are not in the possession, custody, or control of NFL. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents and communications generated on or before July 19, 2011, relating to the MTBI Committee's discussion, consideration, evaluation, or study of the potential long-term effects or risks of head trauma sustained in football, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 54: All Documents and Communications related to any recommendations, proposals, or other input given by the MTBI Committee regarding prevention of injury in NFL players, protocols for testing or diagnosing NFL players, or return-to-play guidelines.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. NFL further objects to this Request to the extent it seeks documents and communications that are not in the possession, custody, or control of NFL. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents generated on or before July 19, 2011, relating to any recommendations, proposals, or other input given by the MTBI Committee regarding the prevention of concussions or alleged brain injury in NFL players, protocols for testing or diagnosing NFL players for concussions or alleged brain injury, or return-to-play guidelines, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 55: All Communications between You and the NFL Physicians Society or any of its directors, officers, or members related to (i) the diagnosis, reporting, or treatment of concussions, postconcussion syndrome, other head trauma, or Alleged Brain Injury in current or former NFL players; (ii) the Head Trauma Litigation; (iii) the Class Action Settlement, or (iv) Dr. Elliot Pellman, and any related Documents.

RESPONSE: NFL objects to this Request insofar as it requests “all” such communications and documents, including communications and documents after July 19, 2011, on the grounds that it seeks communications and documents that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected responsive communications generated on or before July 19, 2011, relating to the diagnosis, reporting, or treatment of concussions, postconcussion syndrome, other head trauma, alleged brain injury in current or former NFL players, or any of the foregoing and Dr. Elliot Pellman, to the extent not previously produced in response to the Insurers’ First Omnibus Set of Document Requests.

REQUEST NO. 56: All Communications between You and the Professional Football Athletic Trainers Society or any of its directors, officers, or members related to the diagnosis, reporting, or treatment of concussions, postconcussion syndrome, other head injury, or Alleged Brain Injury in current or former NFL players or the Head Trauma Litigation or the Class Action Settlement, and any related Documents.

RESPONSE: NFL objects to this Request insofar as it requests “all” such communications, as well as all such communications regarding the head trauma litigation or class action settlement, on the grounds that it seeks communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome.

Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected responsive communications generated on or before July 19, 2011, relating to the diagnosis, reporting, or treatment of concussions, postconcussion syndrome, other head injury, or alleged brain injury in current or former NFL players, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 57: All Documents and Communications related to any research related to head injuries or Alleged Brain Injury that was proposed to, considered by, requested by, sponsored by, or funded by You.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. NFL further objects to this Request insofar as it seeks documents and communications from scientists or research institutes that have performed any research that was proposed to, considered by, requested by, or sponsored by, or funded by NFL, on the grounds that it seeks documents and communications not in the possession, custody, or control of NFL. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents and communications generated on or before July 19, 2011, relating to any research related to the potential long-term effects or risks of head trauma sustained in football that was proposed to, considered by, requested by, sponsored by, or funded by NFL, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 58: All Documents and Communications related to any retention of or consultation with any physician, psychologist or scientist regarding evaluation, analysis, or critique of any disease, treatment, scientific claim, or medical claim related to injuries to NFL players.

RESPONSE: NFL objects to this Request insofar as it requests “all” such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents and communications generated on or before July 19, 2011, reflecting NFL’s consultation with any physician, psychologist, or scientist regarding the potential long-term effects or risks of head trauma sustained in football allegedly sustained by former NFL football players asserting claims for which NFL seeks coverage in this action, to the extent not previously produced in response to the Insurers’ First Omnibus Set of Document Requests.

REQUEST NO. 59: All Documents and Communications relating to the request that Neurosurgery retract the 2005 paper by Dr. Bennet Omalu and others titled “Chronic traumatic encephalopathy in a National Football League player.”

RESPONSE: NFL objects to this Request insofar as it requests “all” such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected responsive documents and

communications generated on or before July 19, 2011, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 60: All Documents and Communications between You and Neurosurgery related to concussions, the potential effects or risks of head trauma sustained in football or Alleged Brain Injuries.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected responsive documents and communications generated on or before July 19, 2011, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 61: All articles, papers, treatises, editorials, letters, statements, criticisms, or studies authored, sponsored, or published by You relating to concussions, the long-term effects or risks of head trauma sustained in football, the potential relationship between head trauma and Alleged Brain Injury, or others' statements or research on these topics.

RESPONSE: NFL objects to this Request insofar as it requests "all" such articles, papers, treatises, editorials, letters, statements, criticisms, studies, or research on the grounds that it seeks articles, papers, treatises, editorials, letters, statements, criticisms, or studies that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. NFL further objects to this Request insofar as it seeks articles, papers, treatises, editorials, letters, statements, criticisms, or studies from scientists or research institutes that have

performed any research that was sponsored by NFL, on the grounds that it seeks documents and communications not in the possession, custody, or control of NFL. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents generated on or before July 19, 2011, reflecting articles, papers, treatises, editorials, letters, statements, criticisms, or studies authored, sponsored, or published by NFL, or others' statements or research, relating to the potential long-term effects or risks of head trauma sustained in football, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 62: All Documents and Communications relating to the resignation of Dr. Elliot Pellman as chair of the MTBI Committee in 2007, Dr. Pellman's involvement with the NFL or any Member Club after his resignation as chair of the MTBI Committee in 2007, and Dr. Pellman's resignation as medical advisor to the NFL in 2016.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected responsive documents and communications generated on or before July 19, 2011, relating to the resignation of Dr. Elliot Pellman as chair of the MTBI Committee in 2007, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 63: All Documents and Communications generated by, sent to, reviewed by, maintained by, or mentioning the Head, Neck and Spine Committee, including but not limited to agendas, minutes, presentations, transcripts, studies or other research findings, notes or other Documents.

RESPONSE: NFL objects to this Request insofar as it requests “all” such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. NFL further objects to this Request to the extent it seeks documents and communications that are not in the possession, custody, or control of NFL. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents and communications generated on or before July 19, 2011, relating to the Head, Neck, and Spine Committee’s discussion, consideration, evaluation, or study of the potential long-term effects or risks of head trauma sustained in football, to the extent not previously produced in response to the Insurers’ First Omnibus Set of Document Requests.

REQUEST NO. 64: All Communications between You and any of the following people, and all Documents or Communications relating to any of the following people: (i) Dr. Elliot Pellman; (ii) Dr. Ira Casson; (iii) Dr. David Viano; (iv) Dr. Bennett Omalu; (v) Dr. John Powell; (vi) Dr. Peter Davies; (vii) Dr. John McShane; (viii) Merrill Hoge; or (ix) Dr. William Barr.

RESPONSE: NFL objects to this Request insofar as it requests “all” such communications on the grounds that it seeks communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected communications generated on or before July 19, 2011, between NFL and the above-listed individuals, or about the above-listed individuals, provided that such communications relate to the treatment or study of the potential long-term effects or

risks of head trauma sustained in football, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 65: All Communications between You and any individuals associated with the Boston University CTE Center, including but not limited to Dr. Ann McKee, Dr. Robert Cantu, Dr. Robert Stern, and Christopher Nowinski, related to concussions, the potential effects or risks of head trauma sustained in football or Alleged Brain Injuries, the autopsies of former NFL players or donations of brains of former NFL players, and any related Documents.

RESPONSE: NFL objects to this Request insofar as it requests "all" such communications on the grounds that it seeks communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected communications generated on or before July 19, 2011, between NFL and any individuals associated with the Boston University CTE Center related to the potential long-term effects or risks of head trauma sustained in football sustained in football or brain injuries, or the autopsies of former NFL players or donations of brains of former NFL players, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 66: All Documents and Communications relating to any donations by You to the Boston University CTE Center.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly

burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents generated on or before July 19, 2011, sufficient to identify any donations by NFL to the Boston University CTE Center, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 67: All Communications between You and the National Institutes of Health, the Foundation for the National Institutes of Health, the House Committee on Energy and Commerce, or any of their employees or agents, related to Alleged Brain Injuries or research funded by the NFL, and any related Documents.

RESPONSE: NFL objects to this Request insofar as it requests "all" such communications on the grounds that it seeks communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected responsive communications generated on or before July 19, 2011, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 68: All Documents and Communications relating to donations made by You to the National Institutes of Health, the Foundation for the National Institutes of Health, or any other entity relating, in whole or in part, to the study of head trauma or Alleged Brain Injuries.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly

burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected responsive documents and communications generated on or before July 19, 2011, sufficient to identify any donations made by NFL to the National Institutes of Health or the Foundation for the National Institutes of Health relating, in whole or in part, to the study of head trauma or Alleged Brain Injury, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 69: All Documents and Communications relating to the NFL Concussion Summit held in June 2007.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected responsive documents and communications generated on or before July 19, 2011, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 70: All Documents and Communications relating to the Congressional hearings held by the House of Representatives Committee on the Judiciary on October 28, 2009 and January 4, 2010, including but not limited to all preparation materials, notes, outlines, presentations, talking points, mock hearing or question-and-answer sessions, transcripts, and post-hearing evaluations.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not

material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected responsive documents and communications generated on or before July 19, 2011, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 71: All Documents and Communications relating to the roundtable discussion held by the House Energy & Commerce Subcommittee on Oversight & Investigations on March 14, 2016, including any preparation materials, notes, talking points, press releases, statements, mock hearing or question-and-answer sessions, transcripts, or post-roundtable evaluations.

RESPONSE: NFL objects to this Request insofar as it requests "all" documents and communications, including all documents and communications created, or coming into NFL's possession, after August 1, 2011, on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action, fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome.

REQUEST NO. 72: All Documents and Communications relating to any research regarding concussions, head injuries or Alleged Brain Injury sustained by NFL players prior to February 14, 2015.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications, including documents and communications after July 19, 2011, on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action, fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. NFL further objects to

this Request insofar as it seeks documents and communications from scientists or research institutes that have performed any research regarding concussions, on the grounds that it seeks documents and communications not in the possession, custody, or control of NFL. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents and communications generated on or before July 19, 2011, relating to any research regarding the potential long-term effects or risks of head trauma sustained by NFL players, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 73: All Documents and Communications relating to the International Symposia on Concussion in Sport held in 2001, 2004, 2008, 2012, and 2016, including all Documents and Communications relating to Your participation or lack of participation in each Symposium.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications, including documents and communications after July 19, 2011, on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents and communications generated on or before July 19, 2011, sufficient to show NFL's participation or lack of participation in the symposia held in 2001, 2004, and 2008, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 74: All Documents and Communications related to the diagnosis, reporting, or treatment of concussions, postconcussion syndrome, other head injury, or Alleged Brain Injury

in current or former NFL players, including but not limited to all concussion protocols, return-to-play protocols, and reporting protocols.

RESPONSE: NFL objects to this Request insofar as it requests “all” such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected responsive documents and communications generated on or before July 19, 2011, sufficient to show any concussion protocols, return-to-play protocols, and reporting protocols implemented by the NFL or drafts thereof, to the extent not previously produced in response to the Insurers’ First Omnibus Set of Document Requests.

REQUEST NO. 75: All Communications between You and ImPACT Applications, Inc., Dr. Mark Lovell, Dr. Michael “Micky” Collins, or Dr. Joseph Maroon and any related Documents, and all Documents related to the use of ImPACT neurological testing or any other neurological testing in the NFL.

RESPONSE: NFL objects to this Request insofar as it requests “all” such communications on the grounds that it seeks communications that are not material and relevant in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected responsive communications generated on or before July 19, 2011, related to Alleged Brain Injury and the use of neurological testing in the NFL, to the extent not previously produced in response to the Insurers’ First Omnibus Set of Document Requests.

REQUEST NO. 76: All Communications between You (or any Member Club) and any current or former NFL player (or NFL player's spouse or personal representative) relating to concussions, sub-concussive impacts, baseline testing, return-to-play following concussive injury, Alleged Brain Injury, the Head Trauma Litigation, or the Class Action Settlement, and any related Documents.

RESPONSE: NFL objects to this Request insofar as it requests "all" such communications, including communications after July 19, 2011, on the grounds that it seeks communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. NFL further objects to this Request insofar as it requests communications from Member Clubs on the grounds that it seeks communications that are not in the possession, custody, or control of NFL. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected communications generated on or before July 19, 2011, between NFL and any current or former NFL player relating to concussions, sub-concussive impacts, baseline testing, return-to-play following concussive injury, or alleged brain injury, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 77: All Documents and Communications related to concussion management guidelines published by the American Academy of Neurology, the Colorado Medical Society, or Dr. Robert Cantu.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce,

after a reasonably diligent search, non-privileged, non-protected responsive documents and communications generated on or before July 19, 2011, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 78 All Documents and Communications relating to the 88 Plan, including but not limited to Documents and Communications related to its creation, its projected costs, all applications for benefits thereunder, and all payments of benefit thereunder.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected documents and communications generated on or before July 19, 2011, relating to the 88 Plan, provided that such documents and communications also relate to the potential long-term effects or risks of head trauma sustained in football, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 79: All Documents and Communications relating to any proposed NFL rule changes intended to protect against head trauma or complications of head trauma.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce,

after a reasonably diligent search, non-privileged, non-protected responsive documents and communications generated on or before July 19, 2011, sufficient to identify the content, timing, and reasons for any proposed NFL rule changes intended to protect against head trauma or complications of head trauma, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 80: All Documents and Communications, including but not limited to research, articles, correspondence, studies, press releases, treatises, letters, or other materials, discussing or relating to concussions, the potential long-term effects or risks of head trauma sustained in football, or the potential relationship between head trauma and Alleged Brain Injury in Your possession since 1920.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected responsive documents and communications discussing or relating to the potential long-term effects or risks of head trauma sustained in football generated on or before July 19, 2011, to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests.

REQUEST NO. 81: All Documents and Communications between You and Sony Pictures or any of its personnel or Peter Landesman relating to the feature film Concussion.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the

requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will nonetheless produce non-privileged, non-protected responsive documents and communications to the extent they are also responsive to another request as modified by the NFL's objections and responses.

REQUEST NO. 82: All Documents and Communications between You, Mark Fainaru-Wada, Steve Fainaru, Three Rivers Press, Crown Publishing Group, or Penguin Random House Company regarding the book, League of Denial.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will nonetheless produce non-privileged, non-protected responsive documents and communications to the extent they are also responsive to another request as modified by the NFL's objections and responses.

REQUEST NO. 83: All Documents and Communications between You, Jeanne Marie Laskas or Random House Publishing regarding the book, Concussion.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will

nonetheless produce non-privileged, non-protected responsive documents and communications to the extent they are also responsive to another request as modified by the NFL's objections and responses.

REQUEST NO. 84: All Documents and Communications between You, Jeanne Marie Laskas or GQ Magazine regarding the article, Game Brain.

RESPONSE: NFL objects to this Request insofar as it requests "all" such documents and communications on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will nonetheless produce non-privileged, non-protected responsive documents and communications to the extent they are also responsive to another request as modified by the NFL's objections and responses.

REQUEST NO. 85: All Documents and Communications relating to public relations efforts You have made or considered relating to the Head Trauma Litigation or the Class Action Settlement.

RESPONSE: NFL objects to this Request, including insofar as it requests "all" such documents and communications, on the grounds that it seeks documents and communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome.

REQUEST NO. 86: All Communications related to concussions, head injuries, Alleged Brain Injury, the Head Trauma Litigation, or the Class Action Settlement between You and Alan

Schwartz, Ken Belson, Peter King, Malcolm Gladwell, Jackie MacMullan, Mark Fainaru-Wada, Steve Fainaru, Peter Keating, or Patrick Hruby.

RESPONSE: NFL objects to this Request insofar as it requests “all” such communications on the grounds that it seeks communications that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will nonetheless produce non-privileged, non-protected responsive documents and communications to the extent they are also responsive to another request as modified by the NFL’s objections and responses.

REQUEST NO. 87: All Communications between You and any media outlets related to concussions, head injuries, Alleged Brain Injury, the Head Trauma Litigation, or the Class Action Settlement, including but not limited to ESPN, the New York Times, GQ, CBS, NBC, Fox Sports, PBS, or DIRECTV.

RESPONSE: NFL objects to this Request insofar as it requests “all” such communications on the grounds that it seeks communications that are not material and relevant in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will nonetheless produce non-privileged, non-protected responsive documents and communications to the extent they are also responsive to another request as modified by the NFL’s objections and responses.

REQUEST NO. 88: All Documents related to any guidelines, policies, procedures, or protocols written or used by You at any time for arena displays, footage licensing requests, or NFL media productions with respect to display or replay of illegal plays, violent plays, injuries, concussions, or any similar topic.

RESPONSE: NFL objects to this Request insofar as it requests “all” such documents on the grounds that it seeks documents that are not material and necessary in the prosecution or defense of this action and fails to identify any of the requested documents with reasonable particularity, and, thus, is overbroad and unduly burdensome. Subject to and without waiving its objections, NFL responds that it will nonetheless produce non-privileged, non-protected responsive documents and communications to the extent they are also responsive to another request as modified by the NFL’s objections and responses.

REQUEST NO. 89: All Documents and Communications related to mock jury exercises, focus groups, surveys, or questionnaires undertaken by You in connection with the Head Trauma Litigation.

RESPONSE: NFL objects to this Request on the grounds that it seeks documents and communications protected from disclosure by the attorney-client privilege and/or the work-product doctrine.

REQUEST NO. 90: All discovery served or exchanged in the Head Trauma Litigation, including but not limited to interrogatories, document requests, and requests for admission and all responses, document productions, subpoenas and any responses, and deposition transcripts.

RESPONSE: Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, non-privileged, non-protected interrogatories and responses (if any), document requests and responses (if any), fact sheets, and deposition transcripts from the underlying litigation, to the extent not previously produced in response to the Insurers’ First Omnibus Set of Document Requests.

REQUEST NO. 91: On or before Your deadline to disclose experts, a current resume or curriculum vitae, a written report explaining each opinion offered, and a copy of all materials reviewed and relied upon by each expert whose opinions You will offer in these cases.

RESPONSE: Subject to and without waiving its objections, NFL responds that it will produce materials when and as required by Rule 13(c) of the Rules of the Commercial Division of the Supreme Court.

REQUEST NO. 92: All Documents and Communications concerning Your Document retention, Document filing, Document storage, server capacity, server upgrades, or electronically-stored information retention in effect between 1990 and the present.

RESPONSE: Subject to and without waiving its objections, NFL responds that it will produce, after a reasonably diligent search, and to the extent not previously produced in response to the Insurers' First Omnibus Set of Document Requests, non-privileged, non-protected documents sufficient to demonstrate NFL's compliance with its disclosure obligations.

Dated: New York, New York
March 17, 2017

COVINGTON & BURLING LLP

By: 

David Z. Pinsky

John E. Hall
David Z. Pinsky
The New York Times Building
620 Eighth Avenue
New York, NY 10018-1405
(212) 841-1000
jhall@cov.com
dpinsky@cov.com

Mitchell F. Dolin
Michael E. Lechliter
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
(202) 662-6000
mdolin@cov.com
mlechliter@cov.com

*Attorneys for Defendants National Football League
and NFL Properties LLC*

EXHIBIT K



120 Mountain View Boulevard
Post Office Box 650
Basking Ridge, New Jersey 07920

908.848.6300
908.848.6310

cmk.com

May 31, 2017

VIA ELECTRONIC MAIL

Mitchell Dolin, Esq.
John Hall, Esq.
Michael Lechlitter, Esq.
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

Re: Alterra America Ins. Co. v. National Football League et al.
Index No. 652813/2012
Discover Property & Casualty Co. v. National Football League et al.
Index No. 652933/2012

Dear Mitchell, John and Mike:

We are in receipt of the NFL Parties' Answers and Objections to Insurers' Second Set of Interrogatories and Document Requests, Custodian List, and Search Terms List served on March 17, 2017. On behalf of certain Insurers, we outline various deficiencies in the NFL Parties' responses and request a "meet and confer" conference to hopefully resolve these issues without court involvement.

General Objections

In their General Objections, the NFL Parties state that they are "not undertaking to search for or produce documents generated after underlying litigation was initiated on July 19, 2011, or documents that came into NFL's possession after July 19, 2011, unless specifically indicated otherwise . . . or separately agreed by the parties." The NFL Parties have offered no basis to categorically exclude any and all documents post-July 19, 2011. Indeed, critical events relevant (and necessary) to the coverage litigation occurred after July 19, 2011, including numerous complaints filed by retired players, motions, court rulings, settlement and mediation communications and documents, and the ultimate Class Action Settlement approved by the courts, among many other relevant documents. The fact that documents dated pre-July 19, 2011 could have come into the NFL Parties' possession after that date is also problematic.¹ The Insurers request that the NFL Parties withdraw this general objection and produce all relevant and non-privileged documents responsive to the Insurers' discovery requests.

¹ If you will represent that no such documents exist, we will be able to narrow the dispute.



Mitchell Dolin, Esq.
John Hall, Esq.
Michael Lechliter, Esq.
May 31, 2017
Page 2 of 11

The General Objections repeatedly state that the NFL Parties will not produce documents that are subject to confidentiality agreements or were produced in a non-litigation context under such an agreement. This is not a valid discovery objection. As has been discussed with the Court many times in connection with the NFL Parties' efforts to avoid discovery proceeding at all, the parties already have agreed to a Confidentiality Order that allows for the production (and protection) of discovery materials the NFL Parties contend is confidential. One of these general objections (No. 12 to the document requests) indicates a willingness to confer with the Insurers regarding "procedures for the production" of materials subject to "Non-Litigation Confidentiality Agreements." Please advise what procedures you have in mind for this category of documents. The Insurers are willing to discuss what additional protections the NFL Parties would like to put in place. However, the more general objection to producing materials in the litigation on the ground that they were previously produced under or are otherwise subject to a confidentiality agreement, or are confidential, is not a valid basis to withhold information or documents. The Insurers ask that you withdraw this objection.

The General Objections also object to the production of documents or information already in the possession of the Insurers or available to the insurers from other sources. These are not valid discovery objections. Whether given information or documents is in the knowledge or possession of one or the other (or both) of the NFL Parties is relevant and the information or documents is discoverable. The fact that one or more of the Insurers also may know certain information or have a copy of a certain document does not relieve the NFL Parties from their discovery obligations. The Insurers ask that you withdraw these objections.

You have objected to the definition of "Insurance Policies" to the extent it includes policies other than those at issue in this case. At a minimum, unless the NFL Parties are willing to stipulate that they are responsible for whatever pro rata share of defense or indemnity costs properly are allocated to time periods for which there is no potentially applicable insurance other than the policies currently at issue, any such other policies are relevant and need to be produced. If the NFL Parties are willing to discuss such a stipulation, please let us know. Otherwise, the Insurers ask that you withdraw this objection.

Finally, the NFL Parties object on the basis that the Class Action Settlement was determined to be a fair, reasonable, and adequate compromise by a federal court such that information relating to the settlement is "not material and necessary" to the coverage action. We disagree. While we acknowledge that the federal court has approved the class action settlement pursuant to the applicable Federal Rules of Civil Procedure, it certainly did not consider any insurance coverage implications arising from the settlement. Nor did it address at all whether the settlement was a reasonable settlement as to each of the NFL Parties separately. Moreover, the NFL Parties are seeking substantial defense payments attributable to their defense counsel's efforts in negotiating the settlement as well as indemnity payments for the uncapped settlement



Mitchell Dolin, Esq.
John Hall, Esq.
Michael Lechliter, Esq.
May 31, 2017
Page 3 of 11

fund. Therefore, the discovery related to the settlement is both relevant and reasonably calculated to lead to the discovery of admissible evidence, and the Insurers ask that you withdraw this general objection.

Interrogatory Responses

In response to **Interrogatory No. 11**, the NFL Parties refuse to identify any persons with knowledge of efforts by the NFL to seek participation in or contribution to the Class Action Settlement from any other potentially responsible parties. The NFL Parties state that such information is not material and necessary to this case. We fail to see how this request is not material and necessary to the case. Under their policies (and at law), the Insurers possess valuable subrogation rights against other potentially responsible parties for any amounts paid on behalf of the NFL Parties. In addition, the Insurers are entitled to determine whether the NFL Parties are paying 100% of the settlement or if funding may be coming from other sources. To explore these issues, the Insurers must determine “persons with knowledge.”

The NFL fails to answer **Interrogatory No. 12** with respect to “Your efforts to obtain insurance coverage for the Head Trauma Litigation or the Class Action Settlement.” Please identify Persons with knowledge of information related to this subject, or, if you object, your basis for doing so.

In response to **Interrogatory No. 16**, the NFL Parties object to providing specific damage information and state only that they have “incurred substantial unreimbursed defense and settlement costs,” which are ongoing. We understand that the NFL Parties’ payment obligations under the settlement and for defense are ongoing. However, please identify the current amount of “unreimbursed defense and settlement costs” the NFL Parties have incurred to date and from which parties the NFL Parties seek such damages.

In response to **Interrogatory No. 17**, the NFL Parties object to providing specific NFL Properties damage information and repeat that the NFL Parties have “incurred substantial unreimbursed defense and settlement costs,” which are ongoing. The point of this interrogatory is to determine what portion, if any, of the defense and settlement costs at issue were paid by NFL Properties. This request clearly seeks relevant and discoverable information. Please identify the current amount of “unreimbursed defense and settlement costs” NFL Properties has paid to date and from which parties NFL Properties seeks any such damages.

In response to **Interrogatory No. 18**, the NFL Parties cross-referenced their answers to Interrogatory No. 8. Please confirm that the persons identified in response to Interrogatory No. 8 constitute all Persons with knowledge of information related to the division or allocation between the NFL, NFL Properties or any other Person of defense costs or expenses incurred in



Mitchell Dolin, Esq.
John Hall, Esq.
Michael Lechliter, Esq.
May 31, 2017
Page 4 of 11

the Head Trauma Litigation or payment of any judgments or settlements related to the Head Trauma Litigation, as requested by Interrogatory No. 18.²

Document Requests

General Issues

- For the majority of their responses, the NFL Parties state that they will produce non-privileged, non-protected documents “after a reasonably diligent search.” Please advise what steps are being taken by the NFL Parties/counsel to undertake a “reasonably diligent search” and the locations searched.
- The NFL Parties refer to three different date cut-offs in their responses – July 19, 2011, August 1, 2011, and August 1, 2012. Please explain the basis for each of these dates and why the date varies for certain requests. Nevertheless, for the reasons addressed above, the Insurers do not agree with the NFL Parties’ proposed cut-off date in 2011 or 2012 because there is a wealth of relevant information and documents after those dates. Indeed, certain requests specifically pertain to events after those dates.
- The NFL Parties object to numerous document requests on the basis that responsive documents are protected from disclosure by the attorney-client privilege, the work product doctrine, or other immunities or privileges. To the extent the NFL Parties contemplate withholding documents relating to the underlying defense efforts (as opposed to the pending coverage action), such documents are not privileged. Under their insurance policies, the NFL Parties have a duty to cooperate with the Insurers and provide information necessary to evaluate the underlying action and settlement. In addition, several of the Insurers have paid millions of dollars in defense costs on behalf of the NFL Parties and, therefore, cannot be deprived of access to the very work product for which they paid. Finally, the NFL Parties seek reimbursement of substantial defense and indemnity costs from the Insurers. The underlying defense file is a relevant and probative source of information related to the evaluation of the underlying claims and potential liability, the settlement negotiation process, and the ultimate Class Action Settlement. The NFL may not shield these material documents from their own Insurers while, at the same time, requesting that the Insurers fund the defense and settlement. In addition, a strict Confidentiality Order is in place in the coverage action, which protects the NFL Parties from any potential harm in producing these documents. Further, the NFL Parties have waived any privilege that might otherwise have been applicable to these materials by placing the defense files at issue by asserting their claims for insurance

² The NFL has already represented that it will meet and confer with the Insurers regarding Interrogatory No. 19.



Mitchell Dolin, Esq.
John Hall, Esq.
Michael Lechliter, Esq.
May 31, 2017
Page 5 of 11

coverage and by asserting that certain Insurers have acted in bad faith by declining to consent to the class action settlement.

- The Insurers' requests contain a defined term for "Alleged Brain Injury." In certain of their responses, the NFL Parties do not use the term "Alleged Brain Injury" as set forth in the request, but instead use other terminology such as "potential long-term effects or risks of head trauma sustained in football," "brain injury allegedly sustained by former NFL football players," or "alleged brain injury."³ If the NFL Parties object to the definition of "Alleged Brain Injury," please explain the basis for doing so. In addition, please explain whether the scope of the terminology used by the NFL Parties differs from "Alleged Brain Injury" as defined by the Insurers, and, if so, how.
- Certain of the NFL Parties' responses are limited to former players despite the request not being so limited. To the extent a request seeks information relating to all players, the NFL Parties' response should be with respect to all such players.
- The specific requests below each relate to documents that are relevant or are reasonably calculated to lead to the discovery of admissible evidence. Each one should be responded to in full.⁴ Failure to address any of the General Issues noted above in discussion of specific requests below does not operate to waive the application of any of the General Issues with respect to that specific request.

Request No. 2-3 – The NFL Parties state that they will produce "copies of all general liability policies located to date that were issued prior to January 1, 2013, and that were issued to, or provide coverage to, NFL." To the extent the NFL Parties possess insurance coverage other than general liability that may be applicable to the underlying action (e.g., E&O or other claims-made coverage), such documents are relevant and discoverable in this case. Also, copies of policies issued to NFL Europe, NFL Europa League, etc. are relevant to the extent they might provide insurance coverage for the NFL liabilities at issue in this case. They are discoverable and should be produced.

Requests No. 9-10 – The NFL Parties state that they will produce "documents sufficient to show the costs for which NFL intends to seek recovery." This is not sufficient. The Insurers requested

³ The requests to which the NFL Parties respond in this manner include Nos. 14, 21-22, 26, 31, 33, 42-44, 46-47, 55-57, 61, 65, 72, 76, and 80. Failure to raise any of these specific requests below does not operate to waive the general objection noted above.

⁴ In an effort to speed and streamline discovery, the Insurers identify below various deficient responses separately. The Insurers reserve the right to supplement their requests and interrogatories with additional discovery in the future and to raise other deficiencies in the NFL Parties' responses in the future.



Mitchell Dolin, Esq.
John Hall, Esq.
Michael Lechliter, Esq.
May 31, 2017
Page 6 of 11

copies of the invoices themselves, as well as all Documents and Communications related to them, including, without limitation, documents showing payment of the costs at issue. The NFL Parties have set forth no substantive basis to object to producing these documents themselves, and the Insurers are aware of none.

Requests No. 15-17 – These requests seek all Documents and Communications relating to the allocation of financial responsibility for liabilities incurred by the NFL as between the NFL and the Member Clubs, and as between the NFL and NFLP. Subject to certain objections, the NFL Parties state that they will produce the NFL’s Constitution and Bylaws, the articles of incorporation and certificate of formation for NFL Properties, Inc., and the closing binder for the merger of NFLP and National Football League Properties, Inc. Please clarify whether these are the only documents you are producing in response to these requests, and, if so, explain your basis for not producing documents relating to allocation.

Request No. 18 – The NFL Parties object to producing documents relating to the financial/business relationship between the NFL and various NFL Europe entities. As you know, the class settlement was amended to include certain former players of the NFL Europe leagues. Thus, the relationship between these entities, particularly regarding the flow of finances between them, is relevant and discoverable in this action.

Requests No. 21-23 – Subject to various objections, the NFL Parties state that they will produce certain “lists or spreadsheets” providing player data. However, the requests more broadly extended to databases or compilations as well. Please clarify whether the NFL Parties intended to distinguish between the types of documents to be produced or whether all responsive, non-privileged lists, databases, compilations, and spreadsheets will be produced.

Request No. 26 – This request sought all Documents and Communications relating to any concussion, head trauma, or Alleged Brain Injury suffered by any NFL player prior to February 14, 2015. Subject to various objections, the NFL Parties state that they will produce materials relating to concussions, head trauma, or brain injury “allegedly sustained by former NFL football players asserting claims for which NFL seeks coverage in this action.” This is an improper limitation of the request because, in addition to the general objection noted above, materials regarding concussions, head trauma, or Alleged Brain Injury suffered by players who are not asserting claims for which the NFL Parties seek coverage could still be relevant to various issues to be litigated in the coverage action.

Request No. 27 – The NFL Parties object to producing any documents relating to workers compensation claims for Alleged Brain Injury by a former NFL player on the basis that the players are not employees of the NFL. As a result, the Insurers can pursue information responsive to this request from other sources such as the teams themselves. However, to the



Mitchell Dolin, Esq.
John Hall, Esq.
Michael Lechliter, Esq.
May 31, 2017
Page 7 of 11

extent the NFL was put on notice of any former player's workers compensation claim and/or received any documents in connection with their claims, such information is in the possession of the NFL, is relevant to various issues to be litigated in the coverage action, and therefore should be produced.

Request No. 28 – Please clarify whether the NFL Parties will only be producing Documents and Communications filed in support of the Class Action Settlement, and, if so, your basis for limiting your production in this manner. As discussed with respect to Request No. 29, limiting your response to publicly-filed documents in connection with the Class Action Settlement is neither sufficient nor completely responsive.

Request No. 29 – The NFL Parties agree to produce all publicly-filed documents in connection with the Class Action Settlement. This is not sufficient. The NFL Parties outright object to categories (a), (b), (c), (d), (f), and (k) on the basis that the requested documents are not “material and necessary” to the coverage action or are otherwise protected from disclosure. The NFL Parties also limit certain categories of their response to “publicly-filed” documents. In this lawsuit, the NFL Parties seek reimbursement of an uncapped underlying Class Action Settlement. The NFL Parties’ objection to the Insurers’ request for communications with the claimants’ attorneys, mediators, and Special Masters/administrators and for all drafts of the Class Action Settlement as overbroad or “not material and necessary” is unpersuasive given their relevance, the magnitude of this case, and the NFL Parties’ claim for coverage. Why each of the NFL Parties decided to settle the class action claims and their evaluation of those claims is relevant to whether the settlement was reasonable as to each, an issue as yet never addressed by any court. In addition, the NFL Parties’ objection to mediation statements and other mediation-related documents as confidential settlement communications can be dealt with by way of designation as Confidential Information pursuant to the strict confidentiality order already in place in this action. Further, the NFL Parties’ Second Amended Counterclaims and Cross-Claims included new claims that certain Insurers acted in bad faith by not consenting to the Class Action Settlement. Even if the Class Action Settlement documents requested somehow were not discoverable prior to the assertion of these claims, the Class Action Settlement documents certainly are relevant and discoverable now.

Request No. 32 – The NFL Parties object to producing any contracts between them and any Manufacturer Entity. To the extent that certain Manufacturer Entities have been named as co-defendants in numerous underlying lawsuits, any contracts (including indemnification/hold harmless agreements) are quite relevant to understanding the scope of liability faced by the NFL Parties in the underlying action as well as the potential for risk transfer opportunities available to the NFL Parties and/or their insurers. Likewise, contracts with Manufacturer Entities that were not named in the underlying lawsuits also are relevant to the extent they identify potential risk transfer mechanisms for the NFL Parties and/or the insurers.



Mitchell Dolin, Esq.
John Hall, Esq.
Michael Lechlitter, Esq.
May 31, 2017
Page 8 of 11

Request No. 33 – After making certain objections, the NFL Parties agree to produce non-privileged and non-protected communications “relating to the potential long-term effects or risks of head trauma sustained in football or to the underlying litigation or settlement.” However, this request seeks communications related to “concussions, head injuries, Alleged Brain Injuries, the Head Trauma Litigation, or the Class Action Settlement.” Please clarify whether the intended scope of “potential long-term effects or risks of head trauma sustained in football” differs from “Alleged Brain Injury” as defined by the Insurers, and clarify whether you object to the Insurers’ definition of “Alleged Brain Injury.”

Request No. 35 – The NFL Parties object to producing any documents relating to efforts to seek participation or contribution to the Class Action Settlement from other potentially responsible tortfeasors. As discussed above, these documents are material and necessary to this case so as to allow the insurers to understand and verify the contemplated funding for the Class Action Settlement, to evaluate the reasonableness of the settlement, and to explore potential avenues for subrogation.

Request No. 36 – Similar to Request No. 32, the NFL Parties object to producing any indemnity agreements between the NFL and any of the Member Clubs. The NFL has represented in the past that it is nothing more than an association of its members. Thus, any agreements with the Member Clubs that discusses financial responsibility as between the NFL and the Member Clubs and/or the Member Clubs’ obligation to defend or indemnify the NFL for claims or losses is extremely relevant to evaluating the Class Action Settlement and the insurers’ potential obligations to provide coverage and/or seek subrogation.

Request No. 38-39 – The NFL Parties object to producing communications with Objectors and Opt-Outs or any evaluation of the potential value of the Opt-Out claims. Simply because the Class Action Settlement was, in the context of a different litigation, “determined to be a fair, reasonable, and adequate compromise” does not eliminate the relevance of the NFL Parties’ communications with the Objectors and Opt-Outs. These communications are not protected by any attorney-client privilege or work product doctrine and are relevant to the Insurers’ understanding of the Class Action Settlement and the scope of potential liability for which the Insurers may be called upon to pay by the NFL Parties. In addition, these communications are relevant to the recently added claims that certain Insurers acted in bad faith.

Request No. 46 – The NFL Parties object to producing documents and communications relating to the “alleged brain injuries” or deaths of certain former NFL players generated after August 1, 2011. This is an improper and arbitrary cut-off date given the issues in this litigation and the fact that many players died after that date. (*See, e.g., Junior Seau*). The NFL Parties also improperly limit the response to identified players rather than all former players as requested.



Mitchell Dolin, Esq.
John Hall, Esq.
Michael Lechlitter, Esq.
May 31, 2017
Page 9 of 11

Request No. 47 – After making certain objections, the NFL Parties agree to produce non-privileged and non-protected documents relating to “Member Clubs’ treatment of concussions or brain injuries allegedly sustained by ‘former NFL football players’ asserting claims for which NFL seeks coverage in this action.” However, this request seeks all Documents and Communications relating to the treatment of concussions or Alleged Brain Injuries by Member Clubs or their medical, training, or other professional staffs. In addition to the “Alleged Brain Injuries” issues previously identified, please clarify whether you are objecting to the production of Documents and Communications relating to the treatment of concussions or Alleged Brain Injuries by Member Clubs’ medical, training, or other professional staffs, and, if so, explain the basis for your objection. Finally, the response inappropriately is limited to former NFL players.

Requests No. 53, 63 – Subject to various objections, the NFL Parties state that they will produce materials relating to the MTBI Committee’s and Head, Neck, and Spine Committee’s (“Committees”) “discussion, consideration, evaluation, or study of the potential long-term effects or risks of head trauma sustained in football.” However, these requests more broadly extended to all Documents and Communications generated by, sent to, reviewed by, maintained by, or mentioning the Committees, including but not limited to agendas, minutes, presentations, transcripts, studies or other research findings, notes or other Documents. Please clarify whether the NFL Parties intended to distinguish between the types of documents to be produced or whether all responsive, non-privileged Documents, including minutes and agendas to the extent any were created, will be produced. Please also clarify whether you will be producing Documents and Communications relating to individual players and documents generated by, sent to, reviewed by, maintained by, or mentioning the individual members of the Committees.

Request No. 55 – Please clarify whether you intend to produce Communications with the NFL Physicians Society, and explain what “or any of the foregoing and Dr. Elliot Pellman” means in your response.

Request No. 71 – The NFL Parties object to producing documents related to the March 14, 2016 roundtable discussion held by Congress on the basis that it took place after August 1, 2011. As discussed, the Insurers object to the NFL Parties’ arbitrary cut-off date for production. This roundtable discussion was focused specifically on the issues at play in the underlying class action and, therefore, is relevant and appropriate for discovery in this action.

Request No. 74 – The NFL Parties state that they will produce certain documents sufficient to show “any concussion protocols, return-to-play protocols, and reporting protocols implemented by the NFL or drafts thereof.” However, the request also sought documents and communications “related to the diagnosis, reporting, or treatment of concussions, postconcussion syndrome, other



Mitchell Dolin, Esq.
John Hall, Esq.
Michael Lechlitter, Esq.
May 31, 2017
Page 10 of 11

head injury, or Alleged Brain Injury in current or former NFL players.” Please confirm that the NFL Parties will produce all responsive and non-privileged/non-protected documents.

Request No. 76 - In addition to the “Alleged Brain Injury” issues discussed above, the NFL Parties’ response fails to state whether the NFL Parties will be producing requested Communications relating to the Head Trauma Litigation or the Class Action Settlement. Please clarify whether the NFL Parties intend to withhold such Communications, and, if so, provide your basis for doing so.

Request No. 80 – Your response fails to state whether the NFL Parties will be producing requested Documents and Communications discussing or relating to concussions or the potential relationship between head trauma and Alleged Brain Injury, and instead is limited to materials relating to the potential long-term effects or risks of head trauma sustained in football. Please clarify whether the NFL Parties intend to withhold requested materials relating to concussions or the potential relationship between head trauma and Alleged Brain Injury, and, if so, provide your basis for doing so.

Requests No. 81-84, 86-87 – The NFL Parties state that they will produce certain documents “to the extent they are also responsive to another request as modified by the NFL’s objections and responses.” These requests seek discoverable information in their own right, and the NFL Parties cannot hinge their production of responsive documents upon whether they are also responsive to other requests. If the NFL Parties believe they have a substantive objection to these categories, please explain.

Request No. 85 – The NFL Parties object to producing any documents relating to public relations efforts it has made or considered in connection with the underlying action and settlement. The Insurers are aware of no privilege that would attach to such material and, indeed, the NFL Parties do not assert any. These relevant documents are “material and necessary” to the defense of this case to the extent that they shed light on the NFL Parties’ strategy in responding to the underlying lawsuits and the motivations of the NFL Parties in entering into the Class Action Settlement.

Request No. 89 – The NFL Parties object to producing mock jury exercises or focus group results in connection with the underlying litigation on the basis of attorney-client privilege and work product doctrine. As discussed, the NFL Parties may not rely upon these protections to shield highly relevant information from their own insurers in the context of a declaratory judgment action in which they intend to seek reimbursement of hundreds of millions of dollars. Again, these documents are relevant the Insurers’ ability to understand the underlying claims, the NFL Parties’ evaluation of same, and their motivations in entering into the Class Action Settlement.



Mitchell Dolin, Esq.
John Hall, Esq.
Michael Lechliter, Esq.
May 31, 2017
Page 11 of 11

Custodian List and Search Terms List

The Insurers believe that the NFL Parties' custodian list and ESI Search Term List are under-inclusive. To ensure that all relevant information and documents are captured, the Insurers propose that the NFL Parties supplement their lists in accordance with Exhibit A and Exhibit B hereto. In addition, we noted that certain individuals identified in the NFL Parties' custodian list have a specific "Relevant Role" identified but appear to have maintained other positions within the NFL or NFLP organization as well. Such custodians must be searched for any relevance to the issues and terms identified in the Insurers' discovery. If the NFL Parties are only searching these custodians with regard to specific identified roles, please so advise.

We look forward to hearing from you on these issues. Please let us know when you are available to discuss.

Very truly yours,

CARROLL, McNULTY & KULL LLC

A handwritten signature in blue ink, appearing to read 'Heather E. Simpson'.

Heather E. Simpson

Enclosures

cc: Insurer Counsel (via e-mail)

EXHIBIT A: NFL PARTIES' CUSTODIAN LIST & PROPOSED SUPPLEMENTAL CUSTODIANS

REDACTED

REDACTED

EXHIBIT B: NFL PARTIES' SEARCH TERM LIST & PROPOSED SUPPLEMENTAL TERMS

REDACTED

Proposed Supplemental Search Terms for NFL Parties

REDACTED

COVINGTON

BEIJING BRUSSELS DUBAI JOHANNESBURG LONDON
LOS ANGELES NEW YORK SAN FRANCISCO SEOUL
SHANGHAI SILICON VALLEY WASHINGTON

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 6000

By Email

August 22, 2017

Insurer Counsel
[See Attached List]

**Re: *Alterra Am. Ins. Co. v. Nat'l Football League*, No. 652813/2012
Discover Prop. & Cas. Co v. Nat'l Football League, No. 652933/2012**

Dear Counsel:

We write with respect to the parties' letters of May 31, 2017 and July 10, 2017, as well as the parties' related meet-and-confer teleconferences of July 20 and 31, 2017. During the teleconferences, the Insurers and the National Football League ("NFL") and NFL Properties LLC ("NFL Properties") (together, the "NFL Policyholders") made certain requests for information in an effort to further the parties' ongoing discussion of the disclosure issues identified in their letters. We write now to respond to the Insurers' requests, and to memorialize the NFL Policyholders' requests that remain outstanding.

I. Insurers' Requests

The Insurers asked the NFL Policyholders to provide further information regarding their search for, and production of, workers compensation materials and certain additional document custodians proposed in the Insurers' May 31 letter.

Workers Compensation. As we have explained, the NFL Policyholders are not specifically searching for documents concerning NFL player workers compensation claims (Request No. 27), although the NFL Policyholders are not excluding such documents if they are otherwise captured by the custodian-focused collection and review process that we disclosed on March 17, 2017. Such claims are made to the member clubs and not to the NFL. To ensure the reasonableness of that approach, the Insurers asked the NFL Policyholders to confirm that they do not maintain a central repository of materials concerning workers compensation claims filed by NFL players against the member clubs. We can confirm that the NFL Policyholders do not maintain any such repository of workers compensation materials.

Additional Custodians. The Insurers have asked the NFL Policyholders to add dozens of individuals as document custodians. As we have explained, many of the individuals on the Insurers' list are already being treated as custodians, and it is not appropriate, for multiple reasons, to include those who are not.

The Insurers asked the NFL Policyholders for two clarifications. First, they asked the NFL Policyholders to confirm that they do not have custody of documents—either NFL-issued email

COVINGTON

Insurer Counsel
August 22, 2017
Page 2

accounts or non-email files—for certain non-parties, including doctors affiliated with various NFL medical committees.¹ After a reasonable search and inquiry, we can confirm that (1) the NFL Policyholders have no record of the additional non-parties ever having been issued NFL.com email addresses and (2) the NFL Policyholders did not collect or maintain documents belonging to these individuals in the normal course of their business.

Second, the Insurers asked for the identity of NFL Properties' current and historical officers. The requested information dating back to 1963 is shown in the enclosed attachment, which the NFL Policyholders have designated confidential pursuant to the Stipulation and Order for the Production and Exchange of Confidential Information entered on May 22, 2013.

II. NFL Policyholders' Requests

The Insurers agreed to provide the NFL Policyholders with certain information to help us clarify and narrow outstanding discovery disputes. The information is described below. We request that you provide it as soon as possible.

A. NFL Policyholders' Requests²

Date Cutoff. Certain of the Insurers clarified that they do not intend to withhold non-privileged documents dated after the commencement of the coverage litigation. Other Insurers, however, stated that their current position is that they refuse to produce any documents dated after the coverage litigation began. Counsel for those Insurers agreed to consult with their clients regarding whether they will join most of the Insurers and drop their insistence on such an unsupportable date cutoff. Please let us know if any Insurers continue categorically to refuse to produce documents on the basis of a date cutoff.

Additional Insured. The NFL Policyholders requested any documents concerning policies issued to the NFL Policyholders' predecessors or any other persons that may also insure the NFL or NFL Properties (*e.g.*, as additional insureds) (Request No. 1). The Insurers agreed that such documents are relevant. Certain Insurers objected, however, claiming that this request is burdensome and that they would need to obtain consent from the policyholders of such policies. The objecting Insurers agreed to determine whether they have databases, indices, search functions, or other means of assessing the burden of this request, and then confirm to the NFL Policyholders whether or not they will agree to undertake a search. They also agreed that if certain responsive documents present a confidentiality concern, they will explain that concern to the NFL Policyholders and inform the NFL Policyholders if they wish to seek any further confidentiality

REDACTED

² For ease of reference, this letter identifies or summarizes discovery requests by shorthand. Such paraphrasing is not a limitation on the scope of the propounded request.

COVINGTON

Insurer Counsel
August 22, 2017
Page 3

protections. The Insurers should please let us know whether or not they will agree to search for such documents and if there are any confidentiality concerns.

Types of Policies. Certain Insurers clarified that they are not refusing to produce documents relating to insurance policies (Request No. 1) other than general liability policies to the extent such documents exist. No Insurer articulated a contrary position. If any Insurer is refusing to produce responsive documents that it possesses because those documents concern non-general-liability NFL Insurance Policies, please clarify your position to us as soon as possible.

Policies Issued by Others. Certain Insurers clarified that, as the NFL Policyholders have requested, they will produce responsive documents that relate to policies issued by another insurer that potentially insure the NFL or NFL Properties (Request No. 1). Other Insurers, however, stated that they could not confirm whether or not they would produce responsive policies that were issued by other insurers. Any Insurer that is continuing to refuse to produce documents relating to policies issued by another insurer should make that position clear to the NFL Policyholders.

Premiums Paid. Certain Insurers have refused to produce evidence of premiums charged and paid (Request No. 2). During the teleconferences, counsel for these Insurers agreed to confirm with their clients whether they will agree to produce such information. Please let us know if any Insurer continues to refuse to produce responsive documents.

Evidence of Missing Policies. Certain Insurers clarified that they are not withholding responsive information, notwithstanding their objections, with respect to evidence of the terms of missing or incomplete policies, or evidence of the existence of missing policies (Requests Nos. 3–11). No Insurer articulated a contrary position. Any Insurer that is continuing to refuse to produce such information should clarify that to us.

In addition, the Insurers that objected to producing standard form examples or specimens with respect to missing or incomplete policies agreed that they would reconsider that position and let us know whether they will produce such documents. Please advise whether such documents will be produced or withheld.

Searches for Missing Policies. During the teleconferences, the Insurers that objected to producing documents concerning their searches for missing policies (Request No. 12) could not confirm whether or not they would stand on their objection. Please let us know if any Insurer intends to continue to refuse to produce such documents.

Documents Concerning the Insurers' Refusal to Defend. During the teleconferences, the Insurers that objected to producing documents concerning their position that they do not have a duty to defend (Request No. 14) could not confirm whether or not they would stand on their objection. Please advise us if any Insurer intends to continue to refuse to produce such documents.

Documents Concerning California Relationship. During the teleconferences, the Insurers that objected to producing documents concerning the relationship of California to their policies and insured risks (Request No. 15) could not explain the basis for their objection. Please

COVINGTON

Insurer Counsel
August 22, 2017
Page 4

let us know if any Insurer intends to continue to refuse to produce such documents, and if so, the basis for such refusal.

Resumes. The Insurers agreed to undertake a search for biographies and resumes of claims handlers to determine whether any responsive documents exist (Request No. 17). If the Insurers locate responsive documents that they refuse to produce, they agreed to explain to the NFL Policyholders the basis for that refusal. Any Insurer that is refusing to produce such documents should please confirm whether or not it has located responsive documents and, if so, the basis for withholding those documents.

Organizational Charts. Certain Insurers clarified that they will produce organizational charts (Request No. 18). Counsel for other Insurers stated that they will confer with their clients on this issue. Please let us know whether any Insurer is continuing to refuse to produce organizational charts.

Underwriting Files. During the teleconferences, Travelers was unable to articulate any basis for its refusal to produce its underwriting files (Request No. 19), which makes it an outlier among all carriers. Counsel for Travelers agreed to reconsider its position. Travelers should please advise the NFL Policyholders if it is continuing to refuse to produce its underwriting files and, if so, the basis for its refusal.

Communications with Insurers. The Insurers confirmed during the teleconferences that they will produce responsive, non-privileged communications among the Insurers (Requests Nos. 20–22). If any Insurer intends to take a contrary position, please let us know.

Underwriting Manuals. During the teleconferences, the Insurers could not confirm whether or not they have any responsive underwriting manuals in their possession, custody, or control (Request No. 23). The Insurers agreed to determine whether they have any such documents. Please let us know whether such documents exist and are in the Insurers' possession, custody, or control.

Documents Concerning Risk of Brain Injury. Certain Insurers stated that they continue to refuse to produce documents concerning any risk of head, brain, or neurocognitive injury arising out of participation in any sport, and certain injuries and diseases allegedly arising out of football (Requests Nos. 24, 32). Other Insurers could not confirm whether or not they would produce responsive documents. If any Insurer is continuing to refuse to produce such documents, please clarify which responsive documents the Insurer refuses to produce and the basis for that refusal.

Documents Concerning Risk of Sports Insurance Exposure. During the teleconferences, certain Insurers could not confirm whether or not they will continue to refuse to produce documents concerning insurance risks arising out of concussions or sub-concussive impacts from participation in any sport, or bodily injury associated with insuring sports leagues, teams, and equipment manufacturers (Requests Nos. 25–26). Please let us know whether any Insurer is continuing to refuse to produce such documents.

COVINGTON

Insurer Counsel
August 22, 2017
Page 5

Identity of Insured Sports Entities. During the teleconferences, NFL Policyholders clarified that their Request No. 27 narrowly seeks only one or more documents sufficient to identify the sports leagues, sports teams, and sports equipment manufacturers to which the Insurers issued general liability policies and the applicable policy periods. Counsel for certain Insurers agreed to confer with their clients regarding whether there is any possibility that any responsive information could be conveyed in a way that would alleviate the Insurers' asserted confidentiality concern. Any Insurer that is withholding responsive documents should please advise whether we should continue discussions regarding potential ways to alleviate any purported confidentiality concern or whether they will refuse to produce such documents in any event.

Marketing Materials. During the teleconferences, no Insurer was able to articulate any basis for its refusal to produce marketing materials concerning the NFL or NFL Properties (Request No. 28). If any Insurer is continuing to refuse to produce such documents, please advise the NFL Policyholders immediately and explain the basis for that position.

Documents Concerning the Underlying Injury Lawsuits. During the teleconferences, no Insurer was able to articulate any basis for refusing to produce documents concerning the underlying injury lawsuits. If any Insurer is continuing to refuse to produce such documents, please advise the NFL Policyholders immediately and explain the basis for that position.

Communications with Plaintiffs. During the teleconferences, no Insurer was able to articulate any basis for refusing to produce communications with the underlying tort plaintiffs, and at least one Insurer indicated that it will reconsider its objections to this request (Request No. 30). If any Insurer is continuing to refuse to produce such documents, please advise the NFL Policyholders and explain the basis for that position.

Claim Files. During the teleconferences, we clarified that the NFL Policyholders' request for claim files (Requests No. 33–34) extends only to claim files relating to the relevant policies (according to the definition of "NFL Insurance Policy" in the NFL Policyholders' requests). Certain Insurers confirmed that they will produce responsive documents notwithstanding their objections. No Insurer stated a contrary position. If any Insurer disagrees and is refusing to produce claim files that it possesses, please clarify your position.

Sports Injury Claims Handling. Many of the Insurers have refused to produce claims handling documents relating to sports leagues, teams, and equipment manufacturers, and relating to certain sports head injuries (Requests Nos. 35–45). The Insurers that objected to this request agreed to advise the NFL Policyholders whether they would produce responsive documents from NFL member clubs' workers compensation files, without prejudice to the NFL Policyholders' view that such a limitation is inappropriate and inadequate. The Insurers also agreed to confer with their clients regarding whether there is any possibility that any responsive information could be conveyed in a way that would alleviate the Insurers' asserted confidentiality concern. Any Insurer that is withholding responsive documents should please advise whether we should continue discussions regarding potential ways to alleviate any purported confidentiality concern or whether they will refuse to produce such documents in any event.

COVINGTON

Insurer Counsel
August 22, 2017
Page 6

Counsel Rates. Counsel for the Insurers agreed that they would reconsider and confer with their clients regarding their refusal to produce documents sufficient to show the highest hourly rate they have paid to counsel in the past five years (Request No. 46). The NFL Policyholders are willing to agree to limit this request to Duty-to-Defend Insurers.³ If any Duty-to-Defend Insurer is continuing to refuse to produce such information, please advise the NFL Policyholders and explain the basis for that position.

Reinsurance and Reserves. The Insurers have refused to produce documents concerning reinsurance and reserves for the claims at issue in this case (Requests Nos. 47–48, Interrogatory No. 2). New York courts, however, have held that insurers are obligated to produce such information, which is relevant to understanding the Insurers' handling of the NFL Policyholders' claims. *See, e.g., Cont'l Ins. Co. v. Garlock Sealing Techs., LLC*, No. 116789, 2006 WL 6157628 (N.Y. Sup. Ct. Mar. 23, 2006). Any Insurers standing on their refusal to produce any reinsurance or reserve information should please explain the basis for their refusal.

Claims Manuals. During the teleconferences, the Insurers asked whether the NFL Policyholders would consider limiting the time period with respect to their request for claims manuals (Request No. 49). The NFL Policyholders continue to believe that all claims manuals prepared or in use by each Insurer after the earliest date on which that Insurer issued an NFL Insurance Policy are relevant. Nonetheless, if any Insurer proposes a time period for claims manuals that it is willing to produce, we are amenable to discussing such a proposal.

Evaluations of Claims Handlers. The Insurers have refused to produce documents concerning performance reviews and evaluation criteria for claims handlers in this case (Request No. 50), but during the teleconferences they were unable to state whether or not they possessed any such documents, or whether their objections would apply to the documents in their possession. The Insurers agreed to determine what documents, if any, are responsive to this request that are within their possession, custody, or control. The Insurers agreed that they would thereafter inform the NFL Policyholders whether they are continuing to refuse to produce such documents and the specific objections relating to those documents they located. Please advise us whether you have located any documents and, if so, whether you object to producing those documents and why.

Interpretive Materials. The insurers that have refused to produce interpretive and regulatory materials relating to certain policy language at issue in this case (Requests Nos. 51–64, 69) agreed to determine whether they have any documents responsive to each of these requests

³ In this letter, "Duty-to-Defend Insurers" refers to Century Indemnity Company, Discover Property & Casualty Insurance Company, Federal Insurance Company, Great Northern Insurance Company, Guarantee Insurance Company, Hartford Accident & Indemnity Company, Illinois Union Insurance Company, North River Insurance Company, OneBeacon America Insurance Company, Pacific Indemnity Company, St. Paul Protective Insurance Company, TIG Insurance Company, and U.S. Fire Insurance Company, as well as their respective predecessors and successors.

COVINGTON

Insurer Counsel
August 22, 2017
Page 7

and, if so, to assess whether they are continuing to refuse to produce such documents. Please let us know what you have found and your position with respect to these requests.

Class Action Settlement Provisions. During the teleconferences, the Insurers asked whether the NFL Policyholders would consider limiting the time period with respect to their request for documents concerning the bar order, judgment reduction, and other class action settlement provisions at issue in this case (Request No. 65). The NFL Policyholders continue to believe that all such documents are relevant. Nonetheless, if any Insurer proposes a time period for claims manuals that it is willing to produce, we are amenable to discussing such a proposal.

Allocation. During the teleconferences, certain Insurers could not confirm whether they would be willing to produce documents concerning allocation of defense costs and liability among affiliated co-defendants (Requests Nos. 66–67), regardless of whether the scope of the request were narrowed in some way. The Insurers agreed to consider whether they might be amenable to a compromise on this issue. Please let us know if there are limitations on the scope of this request that you would propose or if you are otherwise open to potential compromise with respect to this request.

Course of Dealing. The NFL Policyholders clarified during the teleconferences that their request for documents concerning prior claims or disputes or course of dealing (Request No. 68) is limited to such documents involving the NFL or NFL Properties. Certain Insurers agreed to reconsider their refusal to produce such documents in light of this clarification. If any Insurer is continuing to refuse to produce such documents, please advise the NFL Policyholders immediately and explain the basis for that position.

Claims Handlers. During the teleconferences, certain Insurers clarified that they already identified in their interrogatory responses everyone who was or is involved in evaluating or responding to the claims at issue in this litigation, but that they are refusing to identify anyone involved in evaluating or responding to other sports participant head injury claims. Counsel for the Insurers agreed to consult with their clients and let us know whether they would consider proposals for narrowing the scope of this request (Interrogatory No. 1). Any Insurer that has not agreed to provide all of the requested information should please advise if it stands by its refusal or if it is willing to discuss potential compromises.

Law Firms Advising on Coverage. Counsel for certain Insurers agreed to consult with their clients regarding whether they would be willing to reconsider their refusals to identify the law firms advising them on coverage or claim handling for the underlying tort lawsuits (Interrogatory No. 3). Please let us know if, after further consideration, any Insurer continues to refuse to provide the requested information.

B. Insurers' Requests

The NFL Policyholders also require, and the Insurers agreed to provide, additional information concerning the Insurers' requests for documents and information:

Underlying Litigation. As we explained, the Insurers' request for documents concerning the underlying litigation and its settlement (Requests Nos. 28–29, 89) are overbroad

COVINGTON

Insurer Counsel
August 22, 2017
Page 8

and improperly seek information protected by, among other things, the NFL Policyholders' attorney-client privilege and the work product doctrine. Please let us know (1) what specific documents or narrow category of documents the Insurers seek and (2) why you contend that, with respect to each document or category of documents, any potentially applicable privilege or protection does not apply.

NFL Europe. The Insurers' request for documents relating to the relationship between the NFL and various NFL Europe entities (Request No. 18) is vague and overbroad. The Insurers agreed to identify the specific documents or narrow category of documents that they are seeking. Please identify those documents or categories of documents.

Team Indemnity. The Insurers' request for additional documents relating to any indemnity agreements between the NFL Policyholders and the NFL member clubs (Request No. 36) is vague and overbroad, and the Insurers have agreed to narrow their request. Please let us know what specific documents or narrow category of documents you are still seeking.

Opt-Outs and Objectors. The Insurers' request for documents concerning communications with objectors and opt-outs and any valuation of opt-out claims (Request Nos. 38–39) is vague and overbroad, and the Insurers have agreed to narrow their request. Please let us know what specific documents or narrow category of documents you are still seeking.

Damages. The Insurers insist that the NFL Policyholders specifically enumerate their damages in a sworn interrogatory response rather than rely on document discovery (Interrogatory No. 16). The Insurers have agreed to provide authority for their position that such a request is proper at this early stage of the litigation.

Search Terms. The Insurers' list of proposed additional search terms is not well tailored to the facts of this case, especially given the broad set of search terms that the NFL Policyholders have already agreed to employ. The Insurers agreed to reevaluate their proposed additional terms. Please let us know what, if any, additional search terms you are proposing the NFL Policyholders employ, and why you contend that those search terms are necessary and appropriate.

Custodians. We believe that the NFL Policyholders' clarification above concerning certain of the additional document custodians that the Insurers have requested, as well as our discussions during the meet-and-confer teleconferences, have resolved some if not all of the Insurers' requests for additional custodians. Accordingly, please let us know what, if any, additional custodians the Insurers are requesting, and why you contend that those custodians are necessary and appropriate.

* * *

The NFL Policyholders reserve the right to seek additional responses and documents. We look forward to receiving your responses to the NFL Policyholders' information requests, and to continuing the parties' discussion of these issues.

COVINGTON

Insurer Counsel
August 22, 2017
Page 9

Sincerely yours,



Colin Watson
Dustin Cho

Attachment

List of Recipients**Alterra Am. Ins. Co., et al. v. NFL, et al., N.Y. Sup. 652813/2012
Discover Prop. & Cas. Co., et al. v. NFL, et al., N.Y. Sup. 652933/2012**

<i>Counsel for Allstate Insurance Company, solely as successor in interest to Northbrook Excess and Surplus Insurance Company, formerly Northbrook Insurance Company</i>	Stefano V. Calogero, Esq. Andrew K. Craig, Esq. WINDELS, MARX, LANE & MITTENDORF, LLP 156 West 56th Street New York, NY 10019 scalogero@windelsmarx.com acraig@windelsmarx.com
<i>Counsel for American Guarantee & Liability Insurance Company</i>	Robert W. Muilenburg, Esq. Gabriel E. Darwick, Esq. COUGHLIN DUFFY LLP Wall Street Plaza 88 Pine Street, 28th Floor New York, NY 10005 rmuilenburg@coughlinduffy.com gdarwick@coughlinduffy.com
<i>Counsel for Arrowood Indemnity Company</i>	Robert W. Muilenburg, Esq. Gabriel E. Darwick, Esq. COUGHLIN DUFFY LLP Wall Street Plaza 88 Pine Street, 28th Floor New York, NY 10005 rmuilenburg@coughlinduffy.com gdarwick@coughlinduffy.com
<i>Counsel for Bedivere Insurance Company, formerly known as OneBeacon Insurance Company, improperly pled as OneBeacon America Insurance Company</i>	George R. Hardin, Esq. HARDIN, KUNDLA, MCKEON & POLETTI, P.A. 110 William Street, 24th Floor New York, NY 10038 ghardin@hkmpp.com
<i>Counsel for ACE American Insurance Company; Century Indemnity Company (as successor in interest to Insurance Company of North America, Indemnity Insurance Company of North America, and California Union Insurance Company); Federal Insurance Company; Great Northern Insurance Company; Illinois Union Insurance Company; Pacific Indemnity Company; Vigilant Insurance Company; and Westchester Fire Insurance Company</i>	Daren S. McNally, Esq. CLYDE & CO LLP 405 Lexington Avenue New York, NY 10174 daren.mcnally@clydeco.us

<i>Counsel for Continental Casualty Company and The Continental Insurance Company</i>	<p>William P. Lalor, Esq. ELENIUS FROST & WALSH 125 Broad Street, 7th Floor New York, NY 10004 william.lalor@cna.com</p> <p>Brian Walsh, Esq. Edward Tafe, Esq. ELENIUS FROST & WALSH 555 Mission Street San Francisco, CA 94105 brian.walsh@cna.com edward.tafe@cna.com</p>
<i>Counsel for Guarantee Insurance Company</i>	<p>George N. Tompkins, III, Esq. Robert D. Sullivan, Jr., Esq. WILSON ELSEER MOSKOWITZ EDELMAN & DICKER LLP 150 East 42nd Street New York, NY 10017 george.tompkinsIII@wilsonelser.com robert.sullivan@wilsonelser.com</p>
<i>Counsel for Hartford Accident & Indemnity Company and New England Reinsurance Corporation</i>	<p>Jeffrey A. Novack, Esq. STEPTOE & JOHNSON LLP 1114 Avenue of the Americas New York, NY 10036 jnovack@steptoe.com</p> <p>James E. Rocap, III, Esq. Sarah D. Gordon, Esq. STEPTOE & JOHNSON LLP 1330 Connecticut Avenue, N.W. Washington, DC 20036 jrocap@steptoe.com sgordon@steptoe.com</p>
<i>Counsel for Munich Reinsurance America, Inc.</i>	<p>William E. McGrath, Esq. SMITH, STRATTON, WISE, HEHER & BRENNAN, LLP 100 Park Avenue, Suite 1600 New York, NY 10017 wmcgrath@smithstratton.com</p>
<i>Counsel for TIG Insurance Company, The North River Insurance Company, and United States Fire Insurance Company</i>	<p>Christopher R. Carroll, Esq. Heather E. Simpson, Esq. Mark F. Hamilton, Esq. KENNEDYS CMK LLP 570 Lexington Avenue, 8th Floor New York, NY 10022 ccarroll@kennedyscmk.com hsimpson@kennedyscmk.com mhamilton@kennedyscmk.com</p>

<i>Counsel for Travelers Property Casualty Company of America, Travelers Indemnity Company, Travelers Casualty & Surety Company, St. Paul Protective Insurance Company, and Discover Property & Casualty Insurance Company</i>	<p>Thomas A. Martin, Esq. PUTNEY, TWOMBLY, HALL & HIRSON LLP 521 Fifth Avenue New York, NY 10175 tmartin@putneylaw.com</p> <p>Kevin J. O'Connor, Esq. Michael S. Batson, Esq. HERMES, NETBURN, O'CONNOR & SPEARING, P.C. 265 Franklin Street, Seventh Floor Boston, MA 02110 koconnor@hermesnetburn.com mbatson@hermesnetburn.com</p>
<i>Counsel for Westport Insurance Corporation</i>	<p>Gregg D. Weinstock, Esq. VIGORITO, BARKER, PORTER & PATTERSON, LLP 300 Garden City Plaza, Suite 308 Garden City, NY 11530 g.weinstock@vbplaw.com</p> <p>Adam H. Fleischer, Esq. Michael H. Passman, Esq. BATESCAREY LLP 191 North Wacker, Suite 2400 Chicago, IL 60606 afleischer@batescarey.com mpassman@batescarey.com</p>
<i>Counsel for XL Insurance America, Inc. and XL Select Insurance Company</i>	<p>Matthew J. Aaronson, Esq. TROUTMAN SANDERS LLP 875 Third Avenue New York, NY 10022 matthew.aaronson@troutmansanders.com</p> <p>Richard J. Pratt, Esq. Brandon D. Almond, Esq. TROUTMAN SANDERS LLP 401 Ninth Street, NW, Suite 100 Washington, DC 20004 richard.pratt@troutmansanders.com brandon.almond@troutmansanders.com</p>

Kennedys CMK

120 Mountain View Boulevard
Post Office Box 650
Basking Ridge, New Jersey 07920
USA

T +1 908.605.2909
F +1 908.848.6310

www.kennedyscmk.com

Mark.Hamilton@kennedyscmk.com

October 11, 2017

Via Electronic Mail

Colin Watson
Dustin Cho
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956

Re: Alterra America Insurance Co. v. National Football League, et. al.
Index No.: 652813/2012E

Discover Property & Cas. Co., et al. v. National Football League
Index No.: 652933/2012E

Dear Mr. Watson and Mr. Cho:

On behalf of certain Insurers¹, we write in response to your letters of July 10 and August 22, 2017, wherein the NFL Parties (i) identified purported remaining deficiencies in the Insurers' objections and responses to the NFL Parties' Third Request for Production of Documents and Second Set of Interrogatories; and (ii) sought to further address certain disputed discovery issues that had been raised and discussed during teleconferences between counsel for the NFL Parties and the Insurers on July 20 and July 31, 2017 which remain unresolved from the standpoint of the NFL Parties.

As an initial matter, we will address those portions of the July 10 and August 22, 2017 letters that seek further clarity on carrier-specific discovery disputes through communication to *all* of the Insurers. As you know, the Insurers include various entities that have been named as defendants in this litigation (or subgroups of related

¹ The identified insurers include TIG Insurance Company, The North River Insurance Company, United States Fire Insurance Company, Discover Property & Casualty Insurance Company, St. Paul Protective Insurance Company, Travelers Casualty & Surety Company, Travelers Indemnity Company, Travelers Property Casualty Company of America, Continental Insurance Company, Continental Casualty Company, Bedivere Insurance Company, Hartford Accident & Indemnity Company, New England Reinsurance Corporation, ACE American Insurance Company, Century Indemnity Company, Indemnity Insurance Company of North America, California Union Insurance Company, Illinois Union Insurance Company, Westchester Fire Insurance Company, Federal Insurance Company, Great Northern Insurance Company, Vigilant Insurance Company, Munich Reinsurance America, Inc., XL Insurance America Inc., XL Select Insurance Company, American Guarantee and Liability Insurance Company, Arrowood Indemnity Company, Guarantee Insurance Company, and Westport Insurance Corporation (collectively, the "Insurers").

Kennedys Law LLP, a UK Limited Liability Partnership, is a partner of Kennedys CMK LLP.

Regions of offices, associations and corporations: Australia, Argentina, Belgium, Brazil, Chile, China, Colombia, Denmark, England and Wales, France, Hong Kong, India, Ireland, Italy, Mexico, New Zealand, Northern Ireland, Norway, Pakistan, Peru, Poland, Portugal, Russian Federation, Scotland, Singapore, Spain, Sweden, United Arab Emirates, United States of America.

Colin Watson
Dustin Cho

October 11, 2017
Page 2 of 6

Kennedys CMK

entities) which are each represented by their own counsel, whose rights and obligations with respect to the NFL Parties and the underlying litigation are governed by different insurance policies, and who have, in certain instances, adopted varying positions with respect to the scope of what they may or may not be required to produce in response to the NFL Parties' discovery demands. Neither this firm in its capacity as "liaison counsel" for the insurer group nor the Insurers collectively can reasonably respond to the NFL Parties' carrier-specific discovery disputes.

The Insurers understand that, in certain instances, the NFL Parties have addressed the Insurers as a singular group with the expectation that this office would respond to same on behalf of the Insurers as liaison counsel. We appreciate the purpose of this role in furthering our shared interests in advancing this litigation efficiently. We look forward to continuing to work with the NFL Parties in this regard. However, as set forth in the governing Case Management Order entered by Justice Oing on November 14, 2016, the role of liaison counsel "is not intended to preempt the rights of any Insurer Party, but is rather intended to ease the burden and potential delays of communications between the Insurer Parties and the NFL Parties." Accordingly, while "[i]t is expected that liaison counsel will work out the logistics of reporting to the Insurer Parties and [seek] consensus from the Insurer Parties on procedural matters," we cannot, and the Insurers as a group cannot collectively, address the various alleged, carrier-specific discovery issues such as those raised in your letters, particularly to the extent, as you concede in your letters, that there is not a consensus as to certain of these issues.²

In keeping with the Case Management Order, the Insurers have now each made their productions of documents in response to the NFL Parties' document requests and, therefore, the NFL Parties' may readily ascertain the extent to which each individual Insurer has, or has not, produced documents and/or maintained certain of the various positions and/or objections referred to in your July 10 and August 22 letters. Such being the case, the Insurers respectfully request that the NFL Parties, upon review of the documents produced, direct independent correspondence to, or otherwise raise their various alleged discovery issues with, those insurers to which each issue actually applies. Upon receipt of such correspondence from the NFL Parties addressing with particularity any alleged outstanding discovery discrepancies that are specific to each Insurer production, that particular Insurer to which each such letter is addressed will respond accordingly.

Notwithstanding the foregoing, there are several outstanding discovery issues that have been raised in various teleconferences between the Insurers and your office,

² We refer you to the extensive lists of alleged issues concerning the NFL Parties' discovery requests found in your July 10 and August 22 letters, wherein you repeatedly refer, without specificity, to "certain Insurers" having allegedly adopted certain positions or made certain statements with respect to various issues, and to non-specific "other insurers" having taken different positions regarding those same issues.

Colin Watson
Dustin Cho

October 11, 2017
Page 3 of 6

Kennedys CMK

including during the July 20 and 30, 2017 calls, as well as in your July 10 and August 22 letters, that are germane to all of the Insurers. These issues are addressed below.

Underlying Litigation Documents: As reiterated in your August 22 letter, the NFL Parties continue to maintain what is essentially a blanket objection to the production of documents relating to the defense and settlement of the underlying claims for which they are seeking coverage (as opposed to those related to this coverage action) on the basis that such documents are privileged. As we have discussed on numerous occasions, it is the Insurers' position that such documents are not privileged, and, in fact, under the NFL Parties' insurance policies, the NFL Parties have a duty to cooperate with the Insurers by providing those underlying litigation documents, which are necessary for the Insurers to evaluate the defense and settlement of the underlying claims and to present their case regarding the coverage issues in this case. As you know, several of the Insurers have paid millions of dollars in defense costs on behalf of the NFL Parties with respect to the underlying claims, and, therefore, cannot be deprived access to this information. Notably, a protective order has been put in place to address any concerns that the NFL Parties have about preventing the disclosure of this information to third parties. Accordingly, please immediately confirm the NFL Parties' position in this regard. Notwithstanding the foregoing, to the extent that the NFL Parties assert that any underlying litigation document is subject to a privilege, the NFL Parties' position that it is the Insurers' obligation to explain why "any potentially applicable privilege or protection does not apply[]" is wholly unreasonable. Indeed, it is the NFL Parties' burden to prove the applicability of a privilege or protection.

Definition of "Alleged Brain Injury": The Insurers have raised with the NFL Parties, several times, that in responding to discovery requests involving "Alleged Brain Injury," the NFL Parties used different phraseology than that found in the express definition of this term included in the Insurers' requests. The Insurers require that the NFL Parties use the definition that the Insurers carefully crafted and utilized in their Document Requests, as the NFL Parties are required to do, and not any alternative definition unilaterally adopted by the NFL Parties. We note in this regard Mr. Watson's acknowledgement (during the parties' July 20, 2017 meet and confer call) that the NFL Parties "see no daylight" between the language *proposed* in the NFL Parties' responses and that actually found in the Insurers' requests. Please immediately confirm that the NFL Parties' responses to discovery (and their actual document productions) have been made on the basis of the Insurers' definition of "Alleged Brain Injury" and that no documents have been withheld on the basis of any alternative definition proposed by the NFL Parties.

The Language Used in NFL Parties' Responses to Certain Requests for Production: Although this was not addressed in your August 22 letter, during the parties' meet and confer calls, the NFL Parties acknowledged that the language used in the NFL Parties' written responses to the Insurers' Document Request Nos. 21-23, 53, 63, 74, and 80 differed from the actual language of those Requests as propounded

Colin Watson
Dustin Cho

October 11, 2017
Page 4 of 6

Kennedys CMK

by the Insurers. We believe the NFL Parties indicated that their document productions would not be different or narrower than requested by the actual language utilized by the Insurers, but seek your explicit confirmation of same. Specifically, please immediately confirm that the NFL Parties' responses and actual document productions with respect to Document Request Nos. 21-23, 53, 63, 74, and 80 (and any others where the NFL Parties have attempted to substitute different language) are wholly responsive to those Requests as propounded by the Insurers (and using the Insurers' precise definitions applicable to each term included therein) and that no documents that would otherwise be responsive have been withheld based on any difference in the language found in these requests and language that was used by the NFL Parties in their written responses to these requests.

Custodian List/Search Terms: During the parties' various meet and confer calls, and in your August 22 letter, the NFL Parties took issue with the scope of the additional lists of custodians and search terms for ESI suggested by the Insurers. The Insurers do not agree, and consider the breadth of these lists of terms and individuals to be completely appropriate in the context of this case. Nonetheless, to the extent that the NFL Parties have requested that the Insurers reconsider and narrow these lists, and in the interest of continued cooperation, the Insurers propose to winnow the list originally proposed, including by - as the NFL Parties expressly requested - removing the term "impact" (or "ImPACT") from the search terms. In addition, the Insurers have eliminated other search terms and narrowed the scope of others (although on further consideration several narrow additional terms have also been added). Accordingly, the Insurers propose the list of search terms that are attached hereto and ask that you immediately contact us so that we can resolve this issue or determine whether court intervention is necessary.

With respect to custodians, the Insurers have considered the NFL Parties' purported bases for objecting to the Insurers' proposed additional custodians (beyond those offered up by the NFL Parties), which were again referred to in your August 22 letter, and do not agree with them. In the context of the complexity and size of this dispute, and the decades of time implicated, the Insurers' previously proffered list of ESI custodians is eminently reasonable and we, therefore, reiterate the Insurers' request that the NFL Parties' either immediately confirm that all relevant files have been searched or supplement their production with the results of a complete search in keeping with the Insurers' reasonable list of additional custodians (a copy of which is attached hereto). With respect to any individual on the Insurers' proposed list that the NFL Parties continue to refuse to acknowledge as a proper custodian in the context of this case, please explain in writing the particular basis for each such refusal.

Privilege Logs: Your August 22 letter did not address the privilege log issue. Despite numerous attempts, the NFL Parties have never meaningfully engaged in discussions regarding a mutually agreeable format for logging privileged materials. Indeed, no substantive response was received to a tentative proposed compromise shared with the NFL Parties by certain Insurers nearly six (6) months ago. With many

Colin Watson
Dustin Cho

October 11, 2017
Page 5 of 6

Kennedys CMK

months having now passed, the Insurers now propose that all documents over which privilege is being asserted be specifically logged on a document-by-document basis, except for communications with coverage counsel subsequent to the August 13, 2012 commencement of this litigation. This issue, like all the others identified herein, is ripe for determination given the productions that have occurred and the recent document production deadline.

Finally, we note that at the conclusion of your August 22 letter, the NFL Parties make certain assertions about the Insurers' responses to the NFL Parties' contentions regarding previous requests for documents related to "NFL Europe," "Team Indemnity," "Opt-Outs and Objectors," and an interrogatory regarding "Damages." First, the Insurers expressly deny having conceded any obligation to provide the NFL Parties with "authority" for their facially proper request that the NFL Parties articulate their damages in the manner described in the Insurers' Interrogatory No. 16. Please respond to this Interrogatory as drafted immediately. We understand that the NFL Parties contend that their alleged damages calculus is continuing to evolve to a certain extent in the context of the underlying settlement payments and the opt-out cases. As the parties have discussed several times, the Insurers are not requesting that the NFL Parties formally supplement their response to Interrogatory No. 16 on an unreasonably frequent basis and are happy to work with the NFL Parties to reach an agreement as to the frequency of any such supplements or updates. However, the underlying MDL case has been settled and this declaratory judgment action has been in litigation for more than five years. There is no reasonable basis on which the NFL Parties cannot provide the Insurers with a particularized statement of their claimed damages in keeping with the Insurers' Interrogatory No. 16 as of the date of this letter, and we request again that the NFL Parties do so immediately.

To be clear, the Insurers do not agree that their requests regarding NFL Europe, Team Indemnity, or Opt-Outs and Objectors, (i.e., Document Request Nos. 18, 36, 38, and 39 respectively) are in any way vague or overbroad. In meeting and conferring, the parties discussed that the Insurers are only seeking documents falling within these categories that are relevant to this litigation.

Just by way of example, with respect to NFL Europe, the Insurers are not seeking every single document in the NFL Parties' possession discussing or referencing NFL Europe, but are seeking documents relating to or evidencing the foundation of NFL Europe, its corporate structure, its financial relationship with the NFL Parties, and NFL Europe documents related to concussions, head trauma, and the claims, or claims similar to those, asserted in the underlying litigation. Similarly, with respect to "Team Indemnity," we have discussed that these requests are directed at relevant documents evidencing any and all contractual agreements (of any kind) between the NFL Parties and any NFL member team or teams requiring that indemnity for claims asserted against either one of the NFL Parties be provided by the member team or teams. With respect to Opt-Outs and Objectors, we have discussed that the Insurers are not seeking each and every document in the NFL Parties' possession relating in any way to,

Colin Watson
Dustin Cho

October 11, 2017
Page 6 of 6

Kennedys CMK

or mentioning the name of, every former NFL player that is now an opt-out (or was an objector), but rather, we are seeking those documents that reference the Opt-Out players in the context of their claims asserted against the NFL, the defense and settlement of those claims, and those players' respective histories with regard to concussions or other injuries.

The Insurers reserve their rights to further identify deficiencies in the NFL Parties' productions upon completion of their review of the documents produced to date.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Mark F. Hamilton".

Mark F. Hamilton
Partner
For Kennedys CMK

cc: All Counsel (via electronic mail)

Proposed Supplemental Search Terms for NFL Parties

REDACTED

REDACTED

NFL PARTIES' CUSTODIAN LIST & PROPOSED SUPPLEMENTAL CUSTODIANS

NFL's Proposed Custodian List

REDACTED

REDACTED

COVINGTON

BEIJING BRUSSELS DUBAI JOHANNESBURG LONDON
LOS ANGELES NEW YORK SAN FRANCISCO SEOUL
SHANGHAI SILICON VALLEY WASHINGTON

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 6000

By Email

November 2, 2017

Mark Hamilton, Esq.
Kennedys CMK
120 Mountain View Blvd.
P.O. Box 650
Basking Ridge, NJ 07920

**Re: *Alterra Am. Ins. Co. v. Nat'l Football League*, No. 652813/2012
Discover Prop. & Cas. Co v. Nat'l Football League, No. 652933/2012**

Dear Mark:

We write in response to your letter dated October 11, 2017, and further to the NFL Policyholders' letters dated July 10 and August 22, 2017, as well as the parties' related meet-and-confer teleconferences of July 20 and 31, 2017.

I. Response to the NFL Policyholders' Requests for Information.

The NFL Policyholders demand, and are entitled to, a *substantive* response to their August 22 letter from each and every Insurer to which it was addressed. In the August 22 letter, the NFL Policyholders responded voluntarily to multiple Insurer requests for information made during the parties' meet-and-confer discussions. In return, the NFL Policyholders asked for responses to information requests that they made — and that the Insurers accepted — during those very same discussions. All of this was done in a good-faith effort to move this meet-and-confer process forward. Now, after more than seven weeks of complete silence, the Insurers inform the NFL Policyholders for the very first time that they are unwilling to respond to the August 22 letter because it was addressed “to all of the Insurers.” Oct. 11 Letter at 1.

This is unacceptable. The NFL Policyholders' initial discovery letter was directed to *individual* counsel for *individual* Insurers, all specifically enumerated in the distribution list attached to that letter. (That letter was not directed to Kennedys CMK in its capacity as Liaison Counsel.) Each of the recipients of the initial discovery letter was invited to attend the multiple meet-and-confer teleconferences that followed, and many in fact did.

During those teleconferences, which you did not attend, the NFL Policyholders repeatedly singled out *individual* carriers (and counsel) on specific disclosure issues. Moreover, even on common issues, the NFL Policyholders repeatedly asked *individual* carriers (and counsel) to state their *individual* positions. Not one carrier refused to engage in that group setting, and not one carrier claimed to be confused about the issues or how those issues applied (or did not apply) to it. The NFL Policyholders' August 22 letter that followed those discussions

COVINGTON

Mark Hamilton, Esq.
November 2, 2017
Page 2

was, like the discussions and their prior letter, also directed to *individual* counsel for *individual* Insurers, again all specifically enumerated in the distribution list attached to that letter.

In light of this history, including the Insurers' participation in a group meet-and-confer, we categorically reject the belated suggestion that the NFL Policyholders have some obligation to start this process all over again with "individual correspondence." *Id.* at 2. We also reject the self-serving suggestion that the Insurers (and the Insurers alone) need not continue the meet-and-confer process until the NFL Policyholders conduct an unguided tour of the Insurers' document productions. *Id.* The Insurers know the issues, and they know what is in their productions. If any Insurer believes that its production resolves or is relevant to the issues, it should say so in its response to our August 22 letter. We look forward to receiving good-faith responses promptly.

II. Supposedly "Outstanding Discovery Issues . . . Germane to All of the Insurers."

The bulk of the Insurers' October 11 letter seems calculated to ensure that the now months-old meet-and-confer process must begin anew. The letter acknowledges, as it must, the hours-long July 20 and 31 teleconferences the parties participated in. But it then proceeds to ignore the *substance* of those discussions, including the many compromise positions adopted by the Insurers in what we had thought was a good-faith effort to resolve or narrow the parties' disclosure disputes.

The NFL Policyholders decline the invitation to ignore the parties' prior efforts at compromise. Accordingly, we ask that you familiarize yourself with the substance of those efforts. To assist you in that process, we provide the following response to those positions.

Underlying Litigation Documents. The NFL Policyholders are not relying on a "blanket" privilege objection in refusing to produce documents concerning the underlying injury lawsuits. Oct. 11 Letter at 3. Instead, the NFL Policyholders' position is that the Insurers' requests for such information (a) are improperly overbroad, especially in light of what the Insurers have conceded is the rich public record concerning the underlying lawsuits and settlement, which was determined at every level to be a fair, adequate, and reasonable compromise; and (b) improperly seek the production of protected materials. The NFL Policyholders specifically explained this two-fold position during the meet-and-confer teleconferences. The Insurers, in turn, accepted the overbreadth position, and suggested that they were pressing multiple arguments (some of which they identified) against the privilege position. With respect to the privilege position, the NFL Policyholders requested a coherent and supported statement of the Insurers' arguments so that those arguments might be evaluated and addressed.

The NFL Policyholders stand by their position. If the Insurers continue to seek documents on this topic, they must identify those categories of documents and explain the basis for their requests for production. They cannot pretend that the NFL Policyholders are relying on a "blanket" privilege objection. Moreover, with respect to each category of documents requested, the Insurers must articulate their privilege position. In so doing, the Insurers should clarify whether, as the October 11 letter suggests, they have abandoned their position (suggested

COVINGTON

Mark Hamilton, Esq.
November 2, 2017
Page 3

during the meet-and-confer teleconferences) that the NFL Policyholders have put privileged materials “at issue” in this litigation.

Definition of “Alleged Brain Injury” and Language Used in the NFL Policyholders’ Objections and Responses. We do not understand the Insurers’ position on this point. Oct. 11 Letter at 3–4. During our meet-and-confer teleconferences, the Insurers were not able to identify any practical problem with the NFL Policyholders’ use of certain terms in their responses and objections to the Insurers’ requests. The Insurers do no better in the October 11 letter. Accordingly, we continue to believe that this issue has been resolved. If the Insurers have some authority suggesting otherwise, they should cite it to us.

Search Terms. The revised list of search terms and related discussion in the Insurers’ October 11 letter does not advance the ball. *See* Oct. 11 Letter at 4 & Att. During our meet-and-confer teleconferences, the NFL Policyholders explained why the Insurers’ initial list of “supplemental” terms was not reasonable, and asked the Insurers to explain why they believed the additional terms were necessary and appropriate. The Insurers could not do that. Indeed, they professed not even to know why certain terms were on the list. Accordingly, the NFL Policyholders asked the Insurers to regroup and return to us promptly if they had a list of terms that they could justify as necessary and appropriate. The Insurers agreed to do so and stated that they understood why promptness was required if compromise was to be reached given that the NFL Policyholders were nearing the end of their document review.

The new list in the October 11 letter, which came two-and-a-half months later, is neither prompt nor a good-faith effort at compromise. Instead, it presents a list that, on its face, reflects an *expansion* of the prior list, not a “winnowing.” *Id.* at 4. Indeed, whereas the prior list contained 42 new terms, the most recent list contains 46, not including new subparts. *Id.* at 4 & Att. Moreover, the most recent list is still not accompanied by any explanation whatever as to the necessity and appropriateness of the terms, generally or (as requested) with respect to each specific term. *Id.* That lack of explanation was objectionable enough months ago, when the NFL Policyholders’ document production was not substantially complete. But it is inexcusable now that the Insurers have and can assess the significant volume of responsive documents identified and produced using the originally disclosed search terms — more than 27,000 documents, totaling almost 447,000 pages. You must explain how, in light of that substantial production, the adoption of any additional search terms is necessary and appropriate.

Custodian List. The Insurers’ naked repetition of their prior request for additional custodians is not helpful. Oct. 11 Letter at 4. It does not at all reflect, as you claim, any actual “consider[ation of] the NFL Parties’ purported bases for objecting to the Insurers’ proposed additional custodians.” *Id.* at 4.

COVINGTON

Mark Hamilton, Esq.
November 2, 2017
Page 4

For example, the letter does not acknowledge the NFL Policyholders' response to the request for certain "insurance" custodians.¹ As we explained during the meet-and-confer teleconferences, the NFL Policyholders are already collecting, reviewing, and producing any relevant insurance documents from these individuals, with the exception of NFL in-house attorney Michael Buchwald. With respect to Mr. Buchwald, as we said, it is not appropriate to collect and produce his documents, including because there is no production commitment that he might cover that is not already covered by others, including Ms. Danias Schmidt. During our teleconferences, the Insurers expressed no disagreement with this position. Accordingly, we will treat this request for additional custodians as resolved.

The Insurers' letter also does not at all acknowledge the parties' discussion, and the NFL Policyholders' follow-up, with respect to the request for certain custodians who are non-NFL doctors or committee members.² During the meet-and-confer teleconferences, the Insurers expressly stated that they would go directly to these individuals, not the NFL Policyholders, for whatever documents they are seeking. (As you know, the Insurers have already begun this process.) They asked only that the NFL Policyholders confirm that they do not have custody of documents — either NFL-issued email accounts or non-email files — for these non-parties. In their August 22 letter, the NFL Policyholders confirmed, after a reasonable inquiry, that they (1) have no record of the additional non-parties ever having been issued NFL.com email addresses and (2) did not collect or maintain documents belonging to these individuals in the normal course of their business. Accordingly, we believe that this request for additional custodians too has been resolved, and we cannot understand how in good faith the Insurers are acting otherwise.

The Insurers' letter also does not engage the NFL Policyholders' response to the request to add an unknown number of unnamed "NFL Properties Officers" as custodians. As we explained during the meet-and-confer teleconferences, the existing custodians — including Gary Gertzog and Dennis Kayser — provide adequate coverage of any relevant NFL Properties issues. In response, the Insurers asked the NFL Policyholders to identify the officers of NFL Properties over time. As your letter fails to acknowledge, the NFL Policyholders provided that information on August 22. We thus believe that this is yet another request for additional custodians that has been resolved.

Also ignored by the Insurers' letter is the NFL Policyholders' position that Jeff Miller is not an appropriate additional custodian. As we explained during the meet-and-confer teleconferences, we believe that Mr. Miller is, so far as relevant, essentially redundant of other

¹ The individuals are: Anastasia Danias Schmidt; Michael Buchwald; Joseph Siclare; James McCloskey; Thomas Sullivan; John Schoemer; Marshal Leahy; Bill Ray; Austin Gunsell; and Jay Moyer.

² The individuals are: Dr. Ira Casson; Dr. Mark Lovell; Dr. Andrew Tucker; Dr. John Bergfeld; Dr. John Powell; Dr. William Barr; Dr. David Viano; Dr. Joseph Waeckerle; Dr. Hank Feuer; Dr. Joseph Maroon; Dr. Joel Morganlander; Dr. Thomas Naidich; Dr. Edison Miyawaki; Dr. Hunt Batjer; Dr. Richard Ellenbogen; Dr. Kevin Guskiewicz; Dr. Mitch Berger; and Ronald Barnes.

COVINGTON

Mark Hamilton, Esq.
November 2, 2017
Page 5

custodians from which the Insurers have already received *thousands* of documents, including Jeff Pash and Derrick Crawford. The Insurers have never offered any challenge to that position. Accordingly, we are treating this request as resolved like the others.

Finally, the Insurers' letter ignores the NFL Policyholders' stated reasons for not agreeing to add multiple outside counsel as custodians in this case.³ As we explained during the meet-and-confer teleconferences, these proposed additional custodians are not necessary to meet any of the NFL Policyholders' production commitments. Again, the underlying settlement that is the target of this request was determined to be a fair, reasonable, and adequate arm's-length compromise. The Insurers do not need more documents from more custodians to confirm that.

Privilege Log. The assertion that the NFL Policyholders "have never meaningfully engaged" on this issue is demonstrably false. Oct. 11 Letter at 5–6. Indeed, the NFL Policyholders, not the Insurers, initiated the parties' discussion of logging issues, circulating a written proposal more than seven months ago, on March 6, 2017. The NFL Policyholders then discussed that proposal — and the logging issue more generally — during multiple, dedicated meet-and-confer teleconferences, including teleconferences on March 18 and April 5, 2017. (To the best of our recollection, you did not participate in these discussions.)

The parties then exchanged emails, further to the teleconferences, including a June 15, 2017 email in which the NFL Policyholders expressly agreed to "wrap this discussion" of logging issues into the broader meet-and-confer process that was soon to commence. That agreement reflected, in part, the NFL Policyholders' position that the question what *method* of logging should be used is derivative of the question what *documents* will be logged. We reiterated that position during the parties' subsequent meet-and-confer teleconferences.

Even today, the Insurers have never explained the supposed defect in that position. Instead, they now purport to unilaterally withdraw all prior efforts at compromise, and insist on document-by-document logging, on the basis of an invented lack of meaningful engagement on the part of the NFL Policyholders. We do not agree and remind the Insurers of Commercial Division Rule 11-b(b) and regular Commercial Division practice.

Other Issues. The last portion of the Insurers' October 11 letter does not accurately reflect the parties' prior discussions of multiple issues, which we address here briefly. Oct. 11 Letter at 5–6.

Damages Interrogatory. The NFL Policyholders' position, shared during the meet-and-confer teleconferences, continues to be that they will prove their ongoing damages, and articulate those damages when and as appropriate. Although the Insurers explicitly agreed to provide any authority to the contrary, they have offered none. Instead, they counterfactually

³ The individuals are: Brad Karp; Theodore Wells; Bruce Birenboim; Lynn Bayard; Beth Wilkinson; and Paul Clement.

COVINGTON

Mark Hamilton, Esq.
November 2, 2017
Page 6

state that they never so agreed. We will assume that this is because the Insurers have no such authority.

NFL Europe. Here too the NFL Policyholders continue to adhere to the position that they shared during the meet-and-confer teleconferences. The burden is on the Insurers to state more specifically what it is that they are seeking with respect to NFL Europe. The October 11 letter does not meet this burden. Instead, it asks broadly for unspecified documents “relating to or evidencing” a host of subjects with no apparent connection to the relevant issue — whether the NFL Policyholders have coverage for the underlying tort claims by former players in the European leagues. We cannot respond intelligently to this request. We can, however, state — with respect to the request for “NFL Europe documents related to concussions, head trauma, and the claims, or claims similar to those, asserted in the underlying litigation” — that we have not excluded “NFL Europe” documents from our custodian- and search term-focused process.

Team Indemnity. The Insurers’ purported clarification of their request for “team indemnity” documents is not helpful. As we said during the meet-and-confer teleconferences, our understanding is that the NFL member teams do not indemnify the NFL for liabilities such as those at issue here pursuant to any “contractual agreements.” If you are aware of some reason to think that our understanding is mistaken, and that some document(s) may demonstrate that mistake, please let us know and identify the document(s).

Opt-Outs and Objectors. The Insurers’ prior complaint about the NFL Policyholders’ response to Insurer Requests Nos. 38 and 39 focused on the Insurers’ request for all “communications” with opt outs. See May 31, 2017 Letter at 8. During the meet-and-confer teleconferences, the NFL Policyholders explained that that request for all communications is wildly overbroad, and asked for a clarification as to what specific communications the Insurers are actually seeking. The October 11 letter provides no such clarification. Instead, rather than clarify the request, the Insurers have now expanded it, asking for much more than “communications.” It is too late in the day to unilaterally expand these requests beyond their terms and the scope of the meet-and-confer. Even with respect to “communications,” the NFL Policyholders will not engage further until the Insurers narrow their requests as previously discussed.

* * *

The NFL Policyholders reserve the right to seek additional responses and documents. We look forward to receiving your responses to the NFL Policyholders’ information requests, and to continuing the parties’ discussion of these issues.

Sincerely yours,



Colin Watson
Dustin Cho

cc: Insurer Counsel [See Attached List]

List of Recipients**Alterra Am. Ins. Co., et al. v. NFL, et al., N.Y. Sup. 652813/2012
Discover Prop. & Cas. Co., et al. v. NFL, et al., N.Y. Sup. 652933/2012**

<i>Counsel for Allstate Insurance Company, solely as successor in interest to Northbrook Excess and Surplus Insurance Company, formerly Northbrook Insurance Company</i>	Stefano V. Calogero, Esq. Andrew K. Craig, Esq. WINDELS, MARX, LANE & MITTENDORF, LLP 156 West 56th Street New York, NY 10019 scalogero@windelsmarx.com acraig@windelsmarx.com
<i>Counsel for American Guarantee & Liability Insurance Company</i>	Robert W. Muilenburg, Esq. Gabriel E. Darwick, Esq. COUGHLIN DUFFY LLP Wall Street Plaza 88 Pine Street, 28th Floor New York, NY 10005 rmuilenburg@coughlinduffy.com gdarwick@coughlinduffy.com
<i>Counsel for Arrowood Indemnity Company</i>	Robert W. Muilenburg, Esq. Gabriel E. Darwick, Esq. COUGHLIN DUFFY LLP Wall Street Plaza 88 Pine Street, 28th Floor New York, NY 10005 rmuilenburg@coughlinduffy.com gdarwick@coughlinduffy.com
<i>Counsel for Bedivere Insurance Company, formerly known as OneBeacon Insurance Company, improperly pled as OneBeacon America Insurance Company</i>	George R. Hardin, Esq. HARDIN, KUNDLA, MCKEON & POLETTI, P.A. 110 William Street, 24th Floor New York, NY 10038 ghardin@hkmpp.com
<i>Counsel for ACE American Insurance Company; Century Indemnity Company (as successor in interest to Insurance Company of North America, Indemnity Insurance Company of North America, and California Union Insurance Company); Federal Insurance Company; Great Northern Insurance Company; Illinois Union Insurance Company; Pacific Indemnity Company; Vigilant Insurance Company; and Westchester Fire Insurance Company</i>	Daren S. McNally, Esq. CLYDE & CO LLP 405 Lexington Avenue New York, NY 10174 daren.mcnally@clydeco.us Kevin Small, Esq. CLYDE & CO LLP 200 Campus Drive, Suite 300 Florham Park, NJ 07932 Kevin.Small@clydeco.us

<i>Counsel for Continental Casualty Company and The Continental Insurance Company</i>	<p>William P. Lalor, Esq. ELENIUS FROST & WALSH 120 White Plains Road, Suite 200 Tarrytown, NY 10591 william.lalor@cna.com</p> <p>Brian W. Walsh, Esq. Edward J. Tafe, Esq. ELENIUS FROST & WALSH 555 12th Street, Suite 600 Oakland, CA 94607 brian.walsh@cna.com edward.tafe@cna.com</p>
<i>Counsel for Guarantee Insurance Company</i>	<p>George N. Tompkins, III, Esq. Robert D. Sullivan, Jr., Esq. WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP 150 East 42nd Street New York, NY 10017 george.tompkinsIII@wilsonelser.com robert.sullivan@wilsonelser.com</p>
<i>Counsel for Hartford Accident & Indemnity Company and New England Reinsurance Corporation</i>	<p>Jeffrey A. Novack, Esq. STEPTOE & JOHNSON LLP 1114 Avenue of the Americas New York, NY 10036 jnovack@steptoe.com</p> <p>James E. Rocap, III, Esq. Sarah D. Gordon, Esq. STEPTOE & JOHNSON LLP 1330 Connecticut Avenue, N.W. Washington, DC 20036 jrocap@steptoe.com sgordon@steptoe.com</p>
<i>Counsel for Munich Reinsurance America, Inc.</i>	<p>William E. McGrath, Esq. SMITH, STRATTON, WISE, HEHER & BRENNAN, LLP 100 Park Avenue, Suite 1600 New York, NY 10017 wmcgrath@smithstratton.com</p>
<i>Counsel for TIG Insurance Company, The North River Insurance Company, and United States Fire Insurance Company</i>	<p>Christopher R. Carroll, Esq. Heather E. Simpson, Esq. Mark F. Hamilton, Esq. KENNEDYS CMK LLP 570 Lexington Avenue, 8th Floor New York, NY 10022 christopher.carroll@kennedyscmk.com heather.simpson@kennedyscmk.com mark.hamilton@kennedyscmk.com</p>

<i>Counsel for Travelers Property Casualty Company of America, Travelers Indemnity Company, Travelers Casualty & Surety Company, St. Paul Protective Insurance Company, and Discover Property & Casualty Insurance Company</i>	<p>Thomas A. Martin, Esq. PUTNEY, TWOMBLY, HALL & HIRSON LLP 521 Fifth Avenue New York, NY 10175 tmartin@putneylaw.com</p> <p>Kevin J. O'Connor, Esq. Michael S. Batson, Esq. HERMES, NETBURN, O'CONNOR & SPEARING, P.C. 265 Franklin Street, Seventh Floor Boston, MA 02110 koconnor@hermesnetburn.com mbatson@hermesnetburn.com</p>
<i>Counsel for Westport Insurance Corporation</i>	<p>Gregg D. Weinstock, Esq. VIGORITO, BARKER, PORTER & PATTERSON, LLP 300 Garden City Plaza, Suite 308 Garden City, NY 11530 g.weinstock@vbplaw.com</p> <p>Adam H. Fleischer, Esq. Michael H. Passman, Esq. BATESCAREY LLP 191 North Wacker, Suite 2400 Chicago, IL 60606 afleischer@batescarey.com mpassman@batescarey.com</p>
<i>Counsel for XL Insurance America, Inc. and XL Select Insurance Company</i>	<p>Matthew J. Aaronson, Esq. TROUTMAN SANDERS LLP 875 Third Avenue New York, NY 10022 matthew.aaronson@troutmansanders.com</p> <p>Richard J. Pratt, Esq. Brandon D. Almond, Esq. TROUTMAN SANDERS LLP 401 Ninth Street, NW, Suite 100 Washington, DC 20004 richard.pratt@troutmansanders.com brandon.almond@troutmansanders.com</p>

Kennedys CMK

120 Mountain View Boulevard
Post Office Box 650
Basking Ridge, New Jersey 07920
USA

T +1 908.848.1226
F +1 908.848.6310

www.kennedyscmk.com

heather.simpson@kennedyscmk.com

January 17, 2018

VIA ELECTRONIC MAIL

Colin Watson, Esq.
Dustin Cho, Esq.
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956

Re: **Alterra America Insurance Co. v. National Football League, et. al.**
Index No.: 652813/2012E

Discover Property & Cas. Co., et al. v. National Football League
Index No.: 652933/2012E

Dear Colin and Dustin:

On behalf of all Insurers, we write in response to your letter dated November 2, 2017, which discusses various discovery disputes in this matter that have been the subject of extensive discussion via the parties' July 20 and 31, 2017 "meet and confer" teleconferences, the NFL Parties' August 22, 2017 letter, and the Insurers May 31, 2017 and October 11, 2017 letters. We address each issue in turn.

Responses from the Insurers

We do not believe it is productive to continue a debate about whether each insurer is required to respond individually to the NFL Parties' August 22 letter. As you noted, the Insurers have sought to work collectively so as to streamline the meet and confer process. Our firm, as liaison counsel, has taken the lead on preparing discovery deficiency correspondence on behalf of the group. Certain carriers have opted to send individual letters to the NFL Parties and others similarly may do so. If the NFL believes it has received an insufficient response from any particular carrier or the group on any issue, you are free to follow up with the relevant entities to seek a response on those issues.

Underlying Litigation Documents

Although we are always willing to continue productive efforts to resolve discovery disputes, it appears we will need court involvement to resolve this issue. We do not understand your request that the Insurers identify the categories of documents they seek and the basis for such requests. The "category" that the Insurers have

requested, as discussed during our meet and confer calls, is the underlying defense file maintained by Paul Weiss and any other law firm retained by the NFL Parties in connection with the underlying litigation. Solely by way of example, these materials would include all reports, evaluations, recommendations, memos, research, correspondence, mock trial exercises, etc. that were prepared in connection with the underlying litigation. It would also include non-public settlement and mediation related materials that were prepared and exchanged between the parties. The “rich” public record does not supplant the relevance of what is sure to be extensive analysis and communications exchanged between the NFL Parties and defense counsel as to the potential exposure, damages, and chances of success in the underlying litigation.

As discussed numerous times, the basis for these requests include: (1) such documents are neither privileged nor protected as respects the Insurers; (2) the NFL Parties have a contractual duty to cooperate with their Insurers by, among other things, providing underlying litigation documents and analysis; (3) several of the Insurers have paid millions of dollars in defense costs used to fund the preparation of these very materials; (4) the documents are necessary for the Insurers to evaluate the defense and settlement of the underlying claims and to present their case regarding the coverage issues in this action; and (5) the disclosure of these materials is fully protected by the Protective Order already agreed to by the parties in this case and in place for this exact purpose. Defense file materials are routinely produced to insurers in coverage actions (not to mention, defending insurers should already be in possession of such materials by virtue of the tripartite relationship).

Your reference to the Insurers “abandoning” their position that the NFL Parties have put these documents “at issue” in this litigation is incorrect. To clarify, it was counsel for the NFL Parties, not the Insurers, who suggested during our meet and confer call that the Insurers were relying upon the “at issue” doctrine. The Insurers instead focused largely on the five bases identified above to support their request for the underlying defense file. That said, the Insurers reserve their right to assert any and all grounds for obtaining these documents in the event court involvement is necessary, including the arguments relating to the “at issue” doctrine.

Unless the NFL Parties have reconsidered their objection to producing these materials, we consider the parties to be at an impasse on this issue and will be seeking court intervention.

Definition of “Alleged Brain Injury”

The NFL Parties have this dispute backwards. The Insurers served discovery requests upon the NFL Parties using a specific definition of “Alleged Brain Injury.” The NFL Parties are required to use that definition in responding to the discovery or, at a minimum, explain the distinction they are making by using different terminology. It is not the Insurers’ burden to show a “practical problem” with the NFL Parties’ terminology. Thus, the NFL Parties have two options: 1) amend their discovery responses to utilize the Insurers’ definition of Alleged Brain Injury; or 2) confirm that

they have not withheld, and will not withhold in the future, any documents based upon a more restrictive interpretation of “Alleged Brain Injury.” We refer to XL’s letter of November 10, 2017 for a more fulsome discussion of this issue and the Insurers’ position.¹ Given your failure to respond to the Insurers’ and XL’s numerous inquiries on this issue, we believe we are now at an impasse and will seek court intervention.

Custodian List/Search Terms

The Insurers first provided the NFL Parties with their desired supplemental search terms and custodians by way of our May 31, 2017 correspondence. Thus, the NFL Parties’ complaints that their document productions are already “substantially complete” are not well-founded. Given the breadth of the claims asserted in the underlying litigation and the amount of money at stake in this litigation, the Insurers maintain that each of their proposed additional search terms and custodians are appropriate and reasonable.

Simply because the NFL Parties have produced “almost 447,000 pages” of documents—which consist mostly of publicly available information—does not somehow render the Insurers’ request for relevant information inappropriate. Moreover, your rejection of certain custodians as “redundant” is outrageous. The NFL Parties are required to identify all custodians of potentially responsive material. It is not for the NFL Parties to pre-determine, without having undertaken an appropriate search, that all responsive documents in a particular individual’s possession are entirely duplicative of documents produced by other custodians.

In the spirit of compromise, the Insurers enclose an amended supplemental custodian and search term list in an effort to avoid court involvement on this issue.

¹ As XL noted in its November 10, 2017 letter to you, the Insurers propounded the following Requests on the NFL Parties seeking materials related to “Alleged Brain Injury”: 4-5, 14, 21-22, 26-27, 31, 33, 37, 42-44, 46-47, 55-57, 60-61, 65, 67-68, 72, 74, 76, 80, 86-87, and 93-94. Only one of the NFL Parties’ responses to these Requests (No. 68), however, states that the NFL Parties will be producing materials regarding “Alleged Brain Injury,” as requested. Without explanation, the NFL Parties use a different definition than the one propounded by the Insurers for their remaining responses. For instance, responses to Request Nos. 14, 31, 33, 51, 57, 61, 65, 72, and 80 state that the NFL Parties will produce materials regarding “the potential long-term effects or risks of head trauma sustained in football,” when those Requests sought materials relating to Alleged Brain Injury and the long-term effects or risks of head trauma sustained in football. Responses to Request Nos. 21-22 state that the NFL Parties will produce materials regarding “concussions or brain injury.” Response to Request No. 26 states that the NFL Parties will produce materials regarding “concussions, head trauma, or brain injury.” Responses to Request Nos. 42-44 and 46-47 state that the NFL Parties will produce materials regarding “alleged brain injury(ies).” As noted below, the NFL Parties did not respond to Request Nos. 93 and 94 at all.

XL’s November 10 letter also sought confirmation that the NFL Parties’ responses and productions to Request Nos. 21-23, 53, 63, 74, 80, and any other requests to which the NFL Parties attempted to substitute different language, were not limited based on the different language used in the NFL Parties’ responses. Given your failure to respond, we again believe we are at an impasse and will seek court intervention.

You will see that we have withdrawn certain proposed search terms and custodians for purposes of ESI collection.² We note as follows regarding the custodians:

REDACTED

² The Insurers added a few additional custodians and search terms due to information gleaned from the NFL Parties' document productions to date.

³ If we are wrong in this understanding, please notify us immediately.

REDACTED

Damages Information

The NFL Parties still fail to provide an actual reason why they cannot provide the Insurers with the current damage calculations (i.e., the amounts each of the NFL Parties seek from the Insurers for the defense and settlement of the underlying litigation). The Insurers understand that the damages will be ongoing. However, it is undoubtedly true that the NFL Parties are aware of how much they each have incurred in defense and settlement costs to date, more than six years after the underlying litigation commenced. We do not need to provide you with “authority” for a damages interrogatory. It is an express category of discoverable information under Commercial Division Rule 11-a.

Team Indemnity Documents

Your “understanding” as to whether the teams indemnify the NFL for liabilities such as the underlying litigation is not relevant. That will be a legal issue for determination by the court. The Insurers are seeking *any* indemnity agreements between the NFL and/or NFLP and any of the teams, regardless of your opinion as to whether such agreements are applicable here. We also seek any communications between the NFL/NFLP and any of the teams regarding a request for defense or indemnification in connection with the underlying claims or settlement. By way of example, Section 3.11(C) of the 2006 NFL Constitution and Bylaws expressly states that each member club shall “*indemnify the Commissioner, the League and every employee thereof . . . from and against any and all claims, demands, suits or other proceedings*, whether for damages or otherwise, which they, or any of them, or any other party, may at any time have or assert in connection with or by reason of any action taken or not taken by the released/indemnified parties in their official capacities on behalf of the League or any committee thereof.” The Insurers seek all documents and communications regarding this provision of the Constitution and Bylaws, as well as any other indemnity arrangements between the NFL and the teams or any subset of them.

In light of the very large amount of money your clients have sought and likely will seek to recover from the Insurers, additional sources of risk transfer are most certainly relevant and discoverable.

NFL Europe Documents

It is difficult for the Insurers to specifically identify which documents they would like when we have no idea what documents exist. In an effort to streamline this dispute, the Insurers seek the following documents:

- All liability insurance policies issued to the NFL Europe entities;
- Any corporate formation documents for each of the NFL Europe entities;
- Any constitutions, by-laws, or other similar documents maintained by the NFL Europe entities; and
- Any communications between the NFL Parties and any of the NFL Europe entities regarding Alleged Brain Injury, the Head Trauma Litigation, and/or the Class Action Settlement.

Opt-Out Communications

The Insurers seek all communications between the NFL Parties and any of the “opt-out” plaintiffs regarding the opt-out claims and efforts to settle their claims. The Insurers also seek any analysis of any opt-out claims or evaluation of the potential

value/exposure of the “opt-out” claims prepared by or on behalf of the NFL Parties. As we understand it, there are fewer than 100 opt-outs and, thus, we do not believe this highly relevant request is “wildly overbroad.”

Privilege Logs

The Insurers continue to believe that the coverage issues at play here (involving underlying claims alleging wrongful conduct going back many decades) as well as the alleged amount of money at stake in the case warrant the parties undertaking traditional document-by-document privilege logs. The burden and expense of creating same should not be significantly more (and, in fact, might be less) than a categorical log given that the parties already agreed to a detailed Electronic Discovery Order that required production in electronic format. Presumably, the NFL Parties already have reviewed and tagged their privileged documents in an electronic database. Thus, much of the legwork in creating a document-by-document privilege log can be extracted from that database.

With the goal of narrowing the number of outstanding disputes among the parties, the Insurers make the following initial proposal:

- The parties may prepare categorical privilege logs as permitted, but not required, under Rule 11-b of the Commercial Division rules subject to a reservation of all rights by all parties to seek, via informal communications or motion, further information about the logs, to request a more detailed, document-by-document log for any category or document, and/or to contest the designated privileges and categories.
- At its option, any party may prepare a document-by-document privilege log in the first instance.

We trust that this compromise is acceptable to you. Please confirm if that is correct.

Other Deficiency Issues

In addition to those issues that the parties have been meeting and conferring on for some time now, the Insurers have, at present, two additional issues to address. The first is that the NFL Parties failed to provide any response to Document Requests 93 and 94. Your responses end at 92. Please provide responses to those document requests immediately. Having failed to timely assert any objections to these requests, we expect that the NFL Parties will be producing all responsive documents.

More significantly, the Insurers are troubled by the limited scope of the documents produced by the NFL Parties to date. The overwhelming majority of the NFL Parties’ production consists of documents dated post-2000. To the best of our abilities to discern, only 324 records that possess a date reflected in metadata are pre-2000. Only a small number of additional undated documents appear from a manual

review to fall into that time period. As you know, the allegations of wrongdoing in the underlying lawsuits go back several decades earlier than 2000. The NFL's own MTBI Committee (which is the subject of several of our document requests) was formed and active in the mid to late 1990s, a time period where e-mail communication likely was used by the NFL. The earliest e-mail produced by the NFL Parties is dated August 23, 2000, and only two e-mails are dated in 2001. The Insurers find it highly unlikely that the NFL Parties did not utilize e-mail until mid-2000 or that the number of responsive emails from that timeframe can be counted on one hand. Please confirm the date upon which the NFL Parties began using corporate e-mail, or otherwise explain your failure to produce e-mails from this time period.

The fact that the NFL Parties apparently have produced a nominal amount of documents prior to 2000 suggests that a great deal of responsive material has not yet been produced. By our review, it appears that the bulk of the 450,000 pages produced by the NFL Parties consists of publicly-available filings from the underlying MDL docket, daily press clippings maintained by the NFL, and the insurance policies and correspondence. The production is severely lacking in terms of internal correspondence among the personnel of the NFL Parties and/or any of their relevant committees. To date, and just by way of example, we have located no (or minimal) documents related to the MTBI Committee, Head, Neck, & Spine Committee, the 2007 concussion summit, the 88 Plan as it relates to Alleged Brain Injury, minutes from the subcommittee meetings, the 1998 MTBI conferences, or recordings of interviews made by Greg Aiello.⁴

Please advise when we can expect the historical documents responsive to our document requests. If the NFL Parties no longer possess documents from the pre-2000 timeframe, please explain. We note that we have not located the NFL Parties' document retention policies in your existing production although you did not object to producing them. Please produce these documents or identify where we can find them in the NFL Parties' production.

The Insurers reserve all rights with respect to these discovery issues. We look forward to hearing from you to see whether we can eliminate or narrow any of these disputes in advance of the February 6 discovery conference.

Very truly yours,



Heather E. Simpson
Partner
For Kennedys CMK

cc: All Counsel (via electronic mail)

⁴ We also note that NFL00376751 appears to be missing every other page. Please produce the entire document.

PROPOSED SUPPLEMENTAL CUSTODIANS

REDACTED

PROPOSED SUPPLEMENTAL SEARCH TERMS FOR NFL PARTIES

REDACTED

EXHIBIT L

February 2, 2018

By Email

Mr. Tyler D. Evans, Esq.
Law Clerk to Hon. Andrea Masley
Supreme Court, New York County
Part 48, Courtroom 242
60 Centre Street
New York, NY 10007
TDEvans@nycourts.gov

Re: *Alterra America Insurance Co. v. National Football League, et al.*, Index No.
652813/2012E
Discover Property & Casualty Co. v. National Football League, et al., Index No.
652933/2012E

Dear Mr. Evans:

Pursuant to your instructions, we write on behalf of all parties to outline the discovery issues to be discussed at the conference scheduled for February 6, 2018. Although the parties have met and conferred on discovery disputes, it appears we have reached an impasse on some issues and seek the Court's assistance. The parties reserve all rights with respect to discovery issues still pending between them and/or third parties.

Issues to Be Raised by NFL Policyholders

This is an insurance coverage dispute that concerns how the terms of the insurance contracts apply to the NFL Policyholders' insurance claims. The NFL Policyholders have also asserted claims that certain of the Insurers have acted in bad faith in refusing to consent to the class action settlement between the NFL Policyholders and retired NFL players. For these and additional reasons noted below, the NFL Policyholders seek the following in discovery.

1. **Reserves** (Request Nos. 10, 47). The Insurers refuse to produce information regarding the reserves that they set during the ordinary course of their business in connection with the NFL Policyholders' insurance claims. New York law, however, recognizes that insurer reserve information is discoverable. Here, even beyond policy interpretation issues, reserves would be potentially relevant to the Insurers' assessments regarding the reasonableness of the underlying class action settlement entered into by the NFL Policyholders. Reserve information is also discoverable here because the NFL Policyholders have asserted bad faith claims. *See, e.g., Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. H & R Block, Inc.*, No. 12-CV-1505, 2014 WL 4377845, at *4 (S.D.N.Y. Sept. 4, 2014) ("[R]eserves show 'what [the insurer] actually knew and thought, and what motives animated its conduct' and thus are 'critical areas of inquiry in bad faith cases' . . .").

Insurers' Response: The Insurers objected to the production of internal reserve information on the basis that it constitutes commercially-sensitive and proprietary work product that is irrelevant to this coverage dispute and neither material nor necessary to the claims and

Mr. Tyler D. Evans, Esq.

February 2, 2018

Page 2 of 9

defenses at issue. The NFL Parties' blanket statement that New York law recognizes reserve information as discoverable is misleading. Many New York courts have rejected motions to compel insurer reserve information on the basis that it would not shed light on policy interpretation and would undermine the sound public interest in ensuring sound reserve setting by insurers. *See Gold Fields Am. Corp. v. Aetna Cas. & Sur. Co.*, 1994 N.Y. Misc. LEXIS 709, at *14-16 (Sup. Ct. Feb. 24, 1994). The fact that the NFL Parties have asserted bad faith claims against some, but not all, of the Insurers does not make internal reserve information any more relevant here.

2. **Reinsurance** (Request Nos. 9, 47–48, Interrogatory No. 2). The Insurers refuse to produce information regarding their reinsurance for the claims at issue in this case. Reinsurance information, including communications with reinsurers, is discoverable. It can show the insurer's understanding of which risks and claims are covered by an insurer's policy, and like reserve information, it is particularly relevant to show an insurer's motives and lack of good faith in claims handling. *See, e.g., Ins. Co. of N. Am. v. UNR Indus., Inc.*, No. 92 Civ. 4236, 1994 WL 683423 (S.D.N.Y. Dec. 6, 1994) (ordering insurer to produce "communications with reinsurers"). Moreover, CPLR 3101(f) requires the Insurers to produce their reinsurance agreements. *See Clarendon Nat'l Ins. Co. v. Atl. Risk Mgmt., Inc.*, 59 A.D.3d 284, 286 (1st Dep't 2009).

Insurers' Response: The Insurers objected to producing reinsurance agreements and communications because they constitute confidential and proprietary information that is irrelevant to the coverage issues to be determined in this lawsuit. The Insurers' decisions to purchase reinsurance, if any, were based upon business considerations that existed long before the NFL Parties made their claim for coverage. Thus, the existence of reinsurance has absolutely no bearing upon the issue of policy interpretation. In addition, communications between an insurer and its reinsurer are confidential and not discoverable. The Commercial Division has rejected similar requests for reinsurance information. *See Mt. McKinley Ins. Co. v. Corning*, 2010 NY Slip Op 33959(U), ¶¶23-26 (Sup. Ct.) (finding reinsurance irrelevant and rejecting argument that the production of reinsurance agreements was mandated by CPLR 3101(f)).

3. **Claims Manuals and Underwriting Manuals** (Request Nos. 23, 49). The Insurers refuse to produce manuals and guidance containing their policies and procedures for handling claims and for underwriting insurance policies. Claims manuals are relevant to the Insurers' interpretation and application of the insurance contracts they sold to the NFL Policyholders, and to whether the Insurers handled the NFL Policyholders' claims in good faith. Underwriting manuals are relevant to interpreting those same contracts and to identifying the risks that the Insurers understood to be covered. *See, e.g., Mariner's Cove Site B Assocs. v. Travelers Indem. Co.*, No. 04 Civ. 1913, 2005 WL 1075400, at *1 (S.D.N.Y. May 2, 2005) ("[D]ocuments regarding similar claims of other insureds, the drafting history of a policy, and claims manuals are relevant and discoverable in actions to recover insurance reimbursement.").

Insurers' Response: With respect to underwriting manuals (Request No. 23), several Insurers have agreed to produce underwriting manuals relating to their policy periods at issue in this matter if they can be located without unreasonable burden. However, a large number of policies at issue in this litigation were issued decades ago. Therefore, with respect to many Insurers that have not located any underwriting manuals to date, the utility that underwriting manuals in effect decades ago might provide – assuming they could be located – is far outweighed

Mr. Tyler D. Evans, Esq.

February 2, 2018

Page 3 of 9

by the burdens associated with further searching for and locating such documents. With respect to claims manuals (Request No. 49), the NFL Parties have requested copies of all claims manuals prepared or used by the Insurers *at any time after the earliest date on which each Insurer issued its policies*. However, the only claims manuals that are even potentially material in this matter are those in effect during the time period that the Insurers handled the specific claims at issue in this matter. To the extent they can be located, certain Insurers have agreed to produce those claims manuals for the relevant time period. However, with respect to other Insurers, the NFL Parties' allegations do not put those Insurers' claims handling at issue, and thus those Insurers' claims manuals are neither material nor necessary to the claims or defenses at issue between the NFL Parties and those Insurers.

4. **Documents Concerning the Risks of Brain Injuries in Sports** (Request Nos. 24–25, 32). The Insurers have objected to producing documents in their possession concerning risks of brain injuries arising out of participation in sports. The documents must be produced because they are relevant to the Insurers' affirmative defenses, as well as the Insurers' knowledge and understanding of the risks covered by the policies they sold to the NFL Policyholders, a central issue in this case. *See Brooklyn Union Gas Co. v. Century Indem. Co.*, No. 403087/2002, 2005 WL 6226509 (Sup. Ct., N.Y. Cty., Mar. 7, 2005) (policyholder entitled to discovery regarding its insurer's "knowledge" of insured risks).

Insurers' Response: The Insurers have agreed to produce documents in their possession concerning the risks of brain injuries arising out of claims against the NFL relating to football, the sport at issue in this dispute. The NFL Parties apparently are unsatisfied with that response and are pressing for all documents pertaining to the risks of brain injury arising from any sport, at any level. This request is entirely overbroad, unduly burdensome and seeks information that is not material or necessary to the claims or defenses at issue in this lawsuit. As written, the NFL Parties' requests would require the Insurers to search underwriting and claims files for any other policyholder involved in any sports (whether it be youth, high school, college, or professional) and determine if any documents exist related to the risk of brain injury. This extreme burden notwithstanding, the Insurers cannot be required to produce confidential and sensitive documents and claim information pertaining to policyholders other than the NFL Parties.

5. **Travelers' Underwriting Files** (Request No. 19). Alone among the Insurers, the Travelers insurers refuse to produce their underwriting files for the policies they issued to the NFL Policyholders. Such documents are clearly relevant, and Travelers has not asserted any burden in collecting them.

Insurers' Response: This is not an issue that requires discussion at the discovery conference. Subject to the other objections stated in its discovery responses, including its objections to the production of reinsurance and reserve information or materials, Travelers will produce underwriting records with respect to the Travelers policies at issue in this case.

6. **Insurers' Handling of the NFL Policyholders' Claims** (Request No. 30). The Insurers refuse to produce all of their documents concerning their handling of the NFL Policyholders' insurance claims for the underlying lawsuits, including: (a) their consideration of whether they have a duty to provide a complete litigation defense for the NFL Policyholders; (b)

Mr. Tyler D. Evans, Esq.

February 2, 2018

Page 4 of 9

their consideration of the NFL Policyholders' requests for the Insurers' consent to the underlying class action settlement; and (c) their consideration of whether they have a duty to indemnify the NFL Policyholders for the class action settlement. Several Insurers¹ have objected to producing documents that were created after August 13, 2012 (the date one of the NFL's insurers initiated this litigation) — despite the fact that much of the Insurers' conduct at issue occurred after that date. Claims-handling documents such as those described above are ordinary business records relevant to the issue of whether the Insurers breached their obligations under the insurance policies, and also to the NFL Policyholders' claims that certain Insurers did so in bad faith. New York courts require insurers to produce these documents. *See Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. TransCanada Energy USA, Inc.*, 119 A.D.3d 492, 493 (1st Dep't 2014) (requiring production of "[d]ocuments prepared in the ordinary course of an insurer's investigation of whether to pay or deny a claim").

Insurers' Response: The Insurers do not agree they have refused to produce any material non-privileged documents concerning their handling of the NFL Parties' claims for insurance coverage. The Insurers withheld documents that are privileged or otherwise were created in anticipation of litigation. With respect to Insurers that the NFL Parties assert applied an August 2012 date cutoff, Hartford advised the NFL on April 4, 2014, in connection with its substantial production, that it did not include documents postdating August 2012 because of the high likelihood such documents were privileged or otherwise protected from disclosure, but that Hartford was willing to meet and confer on the issue. The NFL Parties never responded to Hartford. Hartford remains willing to meet and confer. Allstate has been engaged in the meet and confer process on this issue (and others) with the NFL and anticipates that it will reach a resolution with the NFL. By email dated February 1, 2018, Munich Re advised counsel for the NFL Parties that it will not categorically refuse to produce otherwise discoverable claim documents after August 13, 2012 to the extent it has any, and offered to meet and confer to discuss a suitable resolution. TIG did not apply an August 13, 2012 cutoff date for its claims file and is incorrectly referenced in the footnote. Other insurers have reserved the right to apply a strict August 13, 2012 cutoff date, but have nonetheless produced non-privileged documents that post-date that cutoff. As such, this issue is not yet ripe for motion practice.

Issues to be Raised by Insurers

1. **Underlying Defense File/Settlement Documents** (Request Nos. 9–10, 13, 28–29, 90, Interrogatory Nos. 8, 9, 10). The NFL Parties' production consists mainly of publicly-available filings from the underlying litigation and press reports. The NFL Parties refuse to produce the defense file or documents, not already public, related to the class action settlement. The NFL Parties also have asserted a discovery cut-off date of July 19, 2011 (based on the commencement date of the first underlying lawsuit) and, therefore, have expressly not undertaken efforts to search for, and have not produced, any documents which came into their possession subsequent to that date (other than publicly-filed litigation documents). The NFL Parties seek insurance coverage for many millions of dollars in defense costs and a class action settlement that is uncapped in amount and will pay claims for the next 65 years. The NFL Parties also accuse certain Insurers of

¹ The TIG, Hartford, Allstate, and Munich Re insurers.

Mr. Tyler D. Evans, Esq.

February 2, 2018

Page 5 of 9

acting in bad faith by refusing to consent to the class action settlement. As such, documents pertaining to the defense and evaluation of the underlying litigation and the reasons for the NFL Parties' settlement are highly relevant to the core issues in this coverage action and discoverable.

NFL Policyholders' Response: The Insurers continue to press their demand for the NFL Policyholders' "defense file" regarding the settlement of the underlying class action, while refusing to engage with the NFL Policyholders on serious questions of relevance and privilege concerning these documents. The Insurers have not demonstrated that the "defense file" has any relevance to this coverage action and have not identified any allegation or factual basis that justifies this fishing expedition into defense counsel's files. These files should not be produced for several reasons:

First, the Insurers' request for documents relating to the class action settlement would be relevant only if there were an issue as to the reasonableness of the settlement. There is no such issue. The settlement was held to be reasonable by the U.S. District Court for the Eastern District of Pennsylvania, after rigorous scrutiny, including into the mediated negotiations that led to the settlement. That decision was affirmed by the U.S. Court of Appeals for the Third Circuit, and petitions for certiorari to the U.S. Supreme Court were unsuccessful.

Second, the Insurers' position that they need information about the settlement from defense counsel's files is even more untenable because they were contemporaneously aware of the arms-length negotiations that led to the settlement agreement. Nearly all of the Insurers participated in regular briefings with the NFL Policyholders' defense counsel during the negotiation of the settlement, received drafts of the settlement agreement and other related materials, and were privy to the mediation's progress at every material step, including through briefings from the mediator himself. This demonstrates that the Insurers' suggestion that they have received *only* "public" documents relating to the settlement is disingenuous, at best. And, as the Insurers are well aware, additional settlement-related materials subject to pre-litigation confidentiality agreements will be produced upon the Insurers' execution of the stipulation proposed most recently on January 23, 2018 by the NFL Policyholders pursuant to Paragraph 16 of Justice Oing's Stipulation and Order for the Production and Exchange of Confidential information. The NFL Policyholders expect that the Insurers will agree to a stipulation that continues to provide non-waiver of privilege and other protections for their insureds, but if that issue reaches impasse the NFL Policyholders may need to seek judicial intervention at the appropriate time. Apart from the other infirmities in the Insurers' position on this issue, the issues raised regarding the "defense file" are not ripe for resolution until the stipulation is resolved and the documents are produced.

Finally, the Insurers' request for underlying litigation documents is fatally overbroad and burdensome, particularly to the extent it seeks documents protected by the attorney-client privilege and work-product doctrine. The Insurers have offered no authority showing that they—the NFL Policyholders' *adversaries* in this litigation—can ignore or somehow circumvent the privilege. New York law clearly holds otherwise.

2. **Damages Information** (Request No. 12, Interrogatory Nos. 16, 17). Commercial Division Rule 11-a expressly permits interrogatories regarding the computation of each category of damage alleged. The NFL Parties objected to the Insurers' damages interrogatories and

Mr. Tyler D. Evans, Esq.

February 2, 2018

Page 6 of 9

responded only that each of them has “incurred substantial unreimbursed defense and settlement costs” that are ongoing. The Insurers understand that the damages are ongoing, but the NFL Parties nonetheless are required to provide the computation of each category of damages alleged by each of them to date and then have an ongoing obligation to supplement the information as necessary. The NFL Parties also are required to produce documents evidencing amounts paid by each of them.

NFL Policyholders’ Response: Rule 11-a does not require that the NFL Policyholders provide, at this premature juncture, a complicated damages assessment as to the dozens of Insurers and policies that turns on disputed legal issues. The NFL Policyholders will articulate and prove their ongoing damages when and as appropriate. In the meantime, the NFL Policyholders are willing to continue providing information to the Insurers about their out-of-pocket payments for defense and settlement costs.

3. **Historical Documents** (Request Nos. 23, 24, 25, 26, 30, 44, 45, 46, 48–54, 62–64, 69, 73, 80, 88, Interrogatory No. 5). The plaintiffs in the underlying litigation alleged that the NFL Parties knew since at least the 1970s that repetitive head trauma sustained by football players could result in long-term neurocognitive problems. As such, the Insurers’ discovery requests sought documents going back many decades, including several key events occurring in the 1990s (e.g. MTBI Committee related documents). Although the NFL Parties have produced approximately 450,000 pages of documents, it appears that less than 1% of these documents are dated pre-2000. In addition, the NFL Parties produced an extremely small number of documents reflecting internal correspondence. The NFL Parties must supplement their production with all responsive documents.

NFL Policyholders’ Response: This issue is not ripe for resolution by the Court. The Insurers raised their concern about “historical documents” for the first time only two weeks ago. The Insurers’ concern, so far as we understand it, is unfounded. The NFL Policyholders have produced tens of thousands of documents, totaling hundreds of thousands of pages, without excluding “historical documents.” Those productions have included internal correspondence, including MTBI Committee documents. The NFL Policyholders have offered to meet and confer with the Insurers so that they can understand and, as appropriate, address this concern.

4. **Custodian Lists/Search Terms.** Under the Electronic Discovery Order, the parties are required to identify any custodians of responsive electronic data and the search terms used for the collection of such data. The NFL Parties omitted several key custodians, including many “persons with knowledge” identified in their interrogatory responses. The NFL Parties also refuse to supplement their search term list with the highly relevant and non-duplicative terms requested by the Insurers. The Insurers’ list of proposed terms and custodians is attached.

NFL Policyholders’ Response: The NFL Policyholders met certain production commitments by collecting and producing documents from 15 core custodians, using 31 search terms. They met other commitments by collecting and producing documents from additional custodians. To date, these processes have yielded almost 650,000 pages of produced material. The Insurers have never explained how their proposed additional custodians and search terms are necessary or appropriate in light of that substantial production. Instead, they have *repeatedly*

Mr. Tyler D. Evans, Esq.

February 2, 2018

Page 7 of 9

expanded their list of search terms, without explanation, and shuffled their list of custodians while ignoring the NFL Policyholders' clearly explained concerns.

5. **Alleged Brain Injury** (Request Nos. 4–5, 14, 21–22, 26–27, 31, 33, 37, 42–44, 46–47, 55–57, 60–61, 65, 67–68, 72, 74, 76, 80, 86–87, and 93–94). Thirty-one of the Insurers' requests use the defined term "Alleged Brain Injury." Only one of the NFL Parties' responses states that the NFL Parties will produce materials regarding "Alleged Brain Injury." The remaining 30 responses utilize different variations of language or lower-case "alleged brain injury(ies)" that appear to narrow the scope of the responses. The NFL Parties have failed to either adequately explain why they did not use the defined term "Alleged Brain Injury" or confirm that they have not withheld documents based upon narrower definitions used in their responses. The NFL Parties also refused to use the Insurers' definitions in other requests, including but not limited to Request Nos. 21-23, 53, 63, 74, and 80.

NFL Policyholders' Response: The NFL Policyholders have told the Insurers repeatedly that they are not withholding documents based on this apparently semantic dispute.

6. **NFL Europe Documents** (Request Nos. 3, 18). The underlying settlement includes former players of various NFL Europe leagues. The NFL Parties objected to the Insurers' requests for documents pertaining to NFL Europe. In an effort to resolve this dispute, the Insurers identified the following categories of documents: 1) liability policies issued to the NFL Europe entities; 2) corporate formation documents for each entity; 3) constitutions and/or by-laws for each entity; and 4) any communications between the NFL Parties and any of the NFL Europe entities regarding Alleged Brain Injury, the Head Trauma Litigation and/or the Class Action Settlement. The NFL Parties have not responded to this proposal.

NFL Policyholders' Response: This new proposal from the Insurers, while narrower, is still overbroad. The NFL Policyholders previously informed the Insurers that they have not excluded "NFL Europe" documents from their custodian- and search-term-focused process (described above). Beyond that, the Insurers have not explained how the NFL Europe policies and corporate documents that the Insurers have identified are material and necessary in the prosecution or defense of this action. Moreover, the NFL Policyholders have already produced many insurance policies that insure NFL Europe entities. Those policies were issued by certain of the Insurers in this litigation, who maintain them in their custody and control.

7. **Indemnity Documents** (Request Nos. 16–17, 36). The NFL Parties objected to producing any indemnity agreements between them and the Member Clubs (teams). Any agreements between the NFL Parties and the Member Clubs (or any entity that may be a source of indemnity) that address financial responsibility as between them, and/or the Member Club's obligation to defend or indemnify the NFL Parties, is relevant to evaluating the settlement and the NFL Parties' damages as well as the Insurers' potential coverage obligations and subrogation rights.

NFL Policyholders' Response: The NFL Policyholders have repeatedly explained that there are no agreements in which NFL teams are required to indemnify the NFL Policyholders for

Mr. Tyler D. Evans, Esq.

February 2, 2018

Page 8 of 9

liabilities such as those at issue here. To help the Insurers understand that point, and in an effort to resolve this dispute, the NFL Policyholders have offered to discuss further the nature of the (irrelevant) indemnity agreements that *do* exist between the NFL and the NFL member clubs. And we have produced those agreements, which are reflected in the NFL Bylaws.

8–9. **Contracts with Manufacturer Entities** (Request Nos. 31–32). The NFL Parties objected to producing any contracts between them and any Manufacturer Entity (including manufacturers of helmets and other equipment). Certain Manufacturer Entities (i.e., Riddell) have been named as co-defendants in the underlying action, and certain of the underlying claims include allegations about the terms of the contracts. The NFL Parties’ contracts with Manufacturer Entities are relevant to understanding the claims that have been asserted against the NFL Parties, the NFL Parties’ damages, and whether any potential risk transfer opportunities exist under those contracts.

Contribution Efforts (Request Nos. 35–36, Interrogatory No. 11). The NFL Parties objected to identifying “persons with knowledge” and producing any documents related to efforts to seek participation in or contribution to the class action settlement from other potentially responsible tortfeasors. The identification of witnesses with knowledge relevant to the subject matter of the action is one of the permitted topics for interrogatories under Commercial Division Rule 11-a. The NFL Parties also objected to producing any documents related to this subject. This information is material and necessary to the case so as to allow the Insurers to verify the NFL Parties’ damages and funding of the settlement, to evaluate its reasonableness, and to explore potential avenues of subrogation.

NFL Policyholders’ Response: Neither of these issues is ripe for resolution by the Court. When the Insurers initially raised these issues in May 2017, the NFL Policyholders explained that discovery of “potential risk transfer opportunities” and “potential avenues of subrogation” that might be available to the Insurers is premature unless and until the Insurers fully honor their obligations to fund the underlying defense and settlement. The Insurers then dropped the issues, and did not raise them again in the parties’ meet-and-confers or related correspondence.

10. **Opt-Out Communications** (Request Nos. 38–39). Certain class members (less than 100 at this time) have “opted-out” of the settlement and maintain their right to pursue litigation against the NFL Parties. The Insurers have requested any communications with the opt-out plaintiffs and any evaluation of their claims. The NFL Parties withheld such materials without any stated basis for doing so.

NFL Policyholders’ Response: The Insurers initially demanded that the NFL Policyholders produce “all” communications with so-called “opt outs.” The NFL Policyholders explained that the request for *all* communications between the NFL Policyholders and these former NFL players is overbroad, and asked that it be narrowed. Rather than engage on that issue, months later, the Insurers merely repeated their overbroad request, and additionally sought “evaluations” of opt-out claims, without acknowledging that any such evaluations are protected by the attorney-client privilege and/or work-product protection. The Insurers cannot ignore reasonable requests to narrow overbroad requests, while at the same time expand their already burdensome demands to seek protected communications and/or work product.

Mr. Tyler D. Evans, Esq.
February 2, 2018
Page 9 of 9

11. **Privilege Log.** The Insurers believe that the circumstances of this case warrant a traditional document-by-document privilege log. The NFL Parties insist that categorical privilege logs be used. Given the Electronic Discovery Order requiring production of documents in electronic format, the Insurers do not believe that the burden of creating a document-by-document privilege log is much greater than a categorical log (if at all). As an initial compromise, the Insurers proposed that the parties be permitted to serve categorical logs subject to a full reservation of rights of any party to seek further information about the logs, to request a more detailed document-by-document log for any and all categories, and/or to contest the designated privileges and categories. The NFL Parties have not responded to this suggested compromise.

NFL Policyholders' Response: The NFL Policyholders believe that this issue has been resolved. After unilaterally declaring negotiations at an impasse, the Insurers changed course in a January 17, 2018 letter and proposed an agreement with respect to the form of privilege log that is acceptable to the NFL Policyholders.

* * *

Respectfully submitted,

COVINGTON & BURLING LLP

KENNEDYS CMK LLP

By: Mitchell F. Dolin /s/
Mitchell F. Dolin

By: Christopher R. Carroll
Christopher R. Carroll

One CityCenter
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000

120 Mountain View Boulevard
Basking Ridge, NJ 07920
(908) 848-6300

*Attorneys for Defendants National
Football League and NFL Properties LLC*

*Attorneys for Defendants TIG Ins. Co.,
United States Fire Ins. Co., and The North
River Ins. Co. (on behalf of all insurer
parties)*

cc: Counsel of Record (by Email)

PROPOSED SUPPLEMENTAL CUSTODIANS

REDACTED

PROPOSED SUPPLEMENTAL SEARCH TERMS FOR NFL PARTIES

REDACTED

EXHIBIT M

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DISCOVER PROPERTY & CASUALTY INSURANCE
COMPANY, ST. PAUL PROTECTIVE INSURANCE
COMPANY, TRAVELERS CASUALTY & SURETY
COMPANY, TRAVELERS INDEMNITY COMPANY,
and TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA,

Plaintiffs,

-against-

NATIONAL FOOTBALL LEAGUE, NFL
PROPERTIES LLC, ALTERRA AMERICA
INSURANCE COMPANY, FIREMAN'S FUND
INSURANCE COMPANY, TIG INSURANCE
COMPANY, CENTURY INDEMNITY COMPANY,
FEDERAL INSURANCE COMPANY, GREAT
NORTHERN INSURANCE COMPANY,
GUARANTEE INSURANCE COMPANY,
HARTFORD ACCIDENT & INDEMNITY
COMPANY, NORTH RIVER INSURANCE
COMPANY, U.S. FIRE INSURANCE COMPANY,
ACE AMERICAN INSURANCE COMPANY,
ILLINOIS UNION INSURANCE COMPANY,
ALLSTATE INSURANCE COMPANY, AMERICAN
GUARANTEE AND LIABILITY INSURANCE
COMPANY, ARROWOOD INDEMNITY COMPANY,
CHARTIS SPECIALTY INSURANCE COMPANY,
CHARTIS PROPERTY CASUALTY COMPANY,
CONTINENTAL CASUALTY COMPANY,
CONTINENTAL INSURANCE COMPANY, ILLINOIS
NATIONAL INSURANCE COMPANY, MUNICH
REINSURANCE AMERICA, INC., NATIONAL
UNION FIRE INSURANCE COMPANY OF
PITTSBURGH, PA, NEW ENGLAND REINSURANCE
CORPORATION, ONEBEACON AMERICA
INSURANCE COMPANY, VIGILANT INSURANCE
COMPANY, WESTCHESTER FIRE INSURANCE
COMPANY, XL INSURANCE AMERICA, INC., DOE
DEFENDANTS 1-100,

Defendants.

Index No. 652933/2012 E

Hon. Jeffrey K. Oing

**NATIONAL FOOTBALL
LEAGUE'S AND NFL
PROPERTIES LLC'S
AMENDED ANSWER TO
AMENDED COMPLAINT
AND SECOND AMENDED
COUNTERCLAIMS AND
CROSS-CLAIMS**

NATIONAL FOOTBALL LEAGUE and NFL
PROPERTIES LLC,

Counterclaim Plaintiffs,

-against-

DISCOVER PROPERTY & CASUALTY INSURANCE
COMPANY, ST. PAUL PROTECTIVE INSURANCE
COMPANY, TRAVELERS CASUALTY & SURETY
COMPANY, TRAVELERS INDEMNITY COMPANY,
TRAVELERS PROPERTY CASUALTY COMPANY
OF AMERICA, and PACIFIC INDEMNITY
COMPANY,

Counterclaim Defendants.

NATIONAL FOOTBALL LEAGUE and NFL
PROPERTIES LLC,

Cross-claim Plaintiffs,

-against-

ALTERRA AMERICA INSURANCE COMPANY, TIG
INSURANCE COMPANY, CENTURY INDEMNITY
COMPANY, FEDERAL INSURANCE COMPANY,
GREAT NORTHERN INSURANCE COMPANY,
GUARANTEE INSURANCE COMPANY,
HARTFORD ACCIDENT & INDEMNITY
COMPANY, NORTH RIVER INSURANCE
COMPANY, U.S. FIRE INSURANCE COMPANY,
ACE AMERICAN INSURANCE COMPANY,
ILLINOIS UNION INSURANCE COMPANY,
ALLSTATE INSURANCE COMPANY, AMERICAN
GUARANTEE AND LIABILITY INSURANCE
COMPANY, ARROWOOD INDEMNITY COMPANY,
CHARTIS SPECIALTY INSURANCE COMPANY,
CHARTIS PROPERTY CASUALTY COMPANY,
CONTINENTAL CASUALTY COMPANY,
CONTINENTAL INSURANCE COMPANY, ILLINOIS
NATIONAL INSURANCE COMPANY, MUNICH
REINSURANCE AMERICA, INC., NATIONAL
UNION FIRE INSURANCE COMPANY OF

PITTSBURGH, PA, NEW ENGLAND REINSURANCE CORPORATION, ONEBEACON AMERICA INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, WESTCHESTER FIRE INSURANCE COMPANY, XL INSURANCE AMERICA, XL SELECT INSURANCE COMPANY, and WESTPORT INSURANCE CORPORATION,

Cross-claim Defendants.

Defendants National Football League (“NFL”) and NFL Properties LLC (“NFL Properties”) (together, “NFL Defendants”), by their undersigned attorneys, answer the allegations contained in the Amended Complaint of Discover Property & Casualty Insurance Company, St. Paul Protective Insurance Company, Travelers Casualty & Surety Company, Travelers Indemnity Company, and Travelers Property Casualty Company of America (together, “Travelers”) dated December 2, 2016. This pleading is filed in accord with the Court’s Case Management Order of November 14, 2016, which provides that “leave shall be freely granted to the NFL Parties to further amend . . . [their] pleading in the future to add a claim for breach of the duty to indemnify in the event any underlying settlement or judgment becomes final.” Subject to the foregoing, NFL Defendants answer as follows:

1. Paragraph 1 is an introductory paragraph that contains no allegations and no response is required from NFL Defendants.

2. NFL Defendants deny the allegations in Paragraph 2, and state that the NFL has been named as a defendant in more than 300 lawsuits, including one or more putative class action lawsuits, brought by former NFL players and/or their families alleging that the NFL players have suffered neurocognitive or related injuries asserted to have arisen from concussive or subconcussive impacts in the course of their NFL playing careers (the “Underlying

Lawsuits”), that NFL Properties has been named as a defendant in at least 190 of those lawsuits, and that the pleadings filed in connection with those lawsuits speak for themselves. NFL Defendants further aver that virtually all of the Underlying Lawsuits were transferred to and centralized in a single multi-district litigation proceeding (“MDL”) before the U.S. District Court for the Eastern District of Pennsylvania, that the MDL includes a certified settlement class, and that more than 150 players or their family members have opted out of the class settlement.

3. Admitted that NFL Defendants entered into a Class Action Settlement Agreement dated June 25, 2014 and amended on February 13, 2015, which concerns some, but not all, of the Underlying Lawsuits. NFL Defendants aver that the aforementioned Class Action Settlement Agreement as and to the extent judicially approved (“the Class Settlement”) becomes effective on the date on which such judicial approval is affirmed by all appellate courts with jurisdiction, including the Supreme Court of the United States, or when such appeals and petitions for certiorari are denied such that no future appeal is possible. NFL Defendants admit that the Class Settlement was approved by the U.S. District Court for the Eastern District of Pennsylvania by entry of a Final Order and Judgment, as subsequently amended in the court’s Amended Final Order and Judgment, and that said approval was affirmed by the U.S. Court of Appeals for the Third Circuit. NFL Defendants further aver that certain objectors to the Class Settlement petitioned the Supreme Court of the United States for writs of certiorari, that such petitions were denied on December 12, 2016, and that the objector-appellants had through January 6, 2017 to petition the Supreme Court for rehearing. NFL Defendants aver that the objector-appellants did not petition for rehearing; consequently, the Class Settlement and the Amended Final Order and Judgment became final and effective on January 7, 2017. NFL Defendants deny that Paragraph 3 accurately reflects the agreement of NFL Defendants under

the Class Settlement and state that the Class Settlement speaks for itself and refer to the Class Settlement for the full contents thereof. NFL Defendants deny that they had any obligation to seek or obtain Travelers' consent to enter into the Class Settlement, and NFL Defendants aver that Travelers unreasonably and in bad faith purported to refuse consent. The remaining allegations in Paragraph 3 are denied.

4. NFL Defendants admit that they have demanded that Travelers and certain other insurers fulfill their obligations to defend and indemnify NFL Defendants with regard to the Underlying Lawsuits, the Class Settlement and the Amended Final Order and Judgment, and any other underlying settlement or judgment as required by liability insurance policies issued to the NFL and/or NFL Properties between 1960 and 2012. NFL Defendants admit that an actual controversy exists between NFL Defendants, Travelers, and certain other insurers with respect to their respective defense and indemnity obligations. No response is necessary to the allegations contained in the last sentence of Paragraph 4 because they characterize the nature of this action and state the relief Travelers is seeking.

5. Denied that Discover is an Illinois corporation; NFL Defendants aver that Discover is a Connecticut corporation. Admitted that Discover was formerly known as Northbrook National Insurance Company and that Discover issued primary commercial general liability insurance policies to NFL Properties for the policy periods March 31, 1988 to March 31, 1989 and March 31, 1996 to March 31, 1997. The allegations in the second sentence of Paragraph 5 are denied on the basis that it is not clear what Travelers means by "at all times relevant hereto." NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 5.

6. Denied that St. Paul is an Illinois corporation; NFL Defendants aver that St. Paul is a Connecticut corporation. Admitted that St. Paul is successor to Northbrook Property and Casualty Insurance Company and that St. Paul's predecessor issued primary commercial general liability insurance policies to NFL Properties for the policy periods March 31, 1984 to March 31, 1988 and March 31, 1989 to March 31, 1996 and umbrella liability policies to NFL Properties for the period periods March 31, 1984 to March 31, 1997. The allegations in the second sentence of Paragraph 6 are denied on the basis that it is not clear what Travelers means by "at all times relevant hereto." NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 6.

7. Admitted that Travelers Casualty & Surety Company ("Travelers Casualty") is a Connecticut corporation, that Travelers Casualty is successor to Aetna Casualty & Surety Company, and that Travelers Casualty's predecessor issued certain excess liability insurance policies to the NFL, although NFL Defendants aver that Travelers has not offered specifics, such as entities insured, policy numbers, or policy periods, regarding any such policies. NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 7.

8. Admitted that Travelers Indemnity Company ("Travelers Indemnity") is a Connecticut corporation, that Travelers Indemnity is successor to Gulf Insurance Company, and that Travelers Indemnity's predecessor issued certain excess liability insurance policies to the NFL, although NFL Defendants aver that Travelers has not offered specifics, such as entities insured, policy numbers, or policy periods, regarding any such policies. NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 8.

9. Admitted that Travelers Property Casualty Company of America (“Travelers Property”) is a Connecticut corporation, that Travelers Property was formerly known as Travelers Indemnity Company of Illinois, and that Travelers Property issued certain excess liability insurance policies to the NFL, although NFL Defendants aver that Travelers has not offered specifics, such as entities insured, policy numbers, or policy periods, regarding any such policies. NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 9.

10. NFL Defendants admit the allegations in Paragraph 10, except that they state that the NFL is an unincorporated association of thirty-two member clubs and is organized under the laws of the State of New York.

11. NFL Defendants admit the allegations in Paragraph 11, but state that the correct name is NFL Properties LLC.

12. Admitted that Alterra America Insurance Company (“Alterra”) is a Delaware corporation and that Alterra issued a liability insurance policy to NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 12 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.” NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 12.

13. Admitted that Fireman’s Fund Insurance Company (“Fireman’s Fund”) is a California corporation and that Fireman’s Fund issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 13 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.”

NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 13.

14. Admitted that TIG Insurance Company (“TIG”) is a California corporation and that TIG and/or its predecessor(s) issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 14 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.” NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 14.

15. Admitted that Century Indemnity Company (“Century”) is a Pennsylvania corporation and that Century is successor to Insurance Company of North America, Indemnity Insurance Company of North America, and California Union Insurance Company. Admitted that Century’s predecessors issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 15 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.” NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 15.

16. Admitted that Federal Insurance Company (“Federal”) is an Indiana corporation and that Federal issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 16 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.” NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 16.

17. Admitted that Great Northern Insurance Company (“Great Northern”) is an Indiana corporation and that Great Northern issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 17 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.” NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 17.

18. Admitted that Guarantee Insurance Company (“Guarantee”) is a Florida corporation and that Guarantee issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 18 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.” NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 18.

19. Admitted that Hartford Accident & Indemnity Company (“Hartford”) is a Connecticut corporation and that Hartford issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 19 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.” NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 19.

20. Admitted that North River Insurance Company (“North River”) is a New Jersey corporation and that North River issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 20 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.”

NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 20.

21. Admitted that U.S. Fire Insurance Company (“U.S. Fire”) is a Delaware corporation and that U.S. Fire issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 21 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.” NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 21.

22. Admitted that ACE American Insurance Company (“ACE”) is a Pennsylvania corporation and that ACE issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 22 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.” NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 22.

23. Admitted that Illinois Union Insurance Company (“Illinois Union”) is an Illinois corporation and that Illinois Union issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 23 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.” NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 23.

24. Admitted that Allstate Insurance Company (“Allstate”) is an Illinois corporation and that Allstate’s predecessor issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 24 are

denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.”

NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 24.

25. Admitted that American Guarantee and Liability Insurance Company (“American Guarantee”) is a New York corporation and that American Guarantee issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 25 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.” NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 25.

26. Admitted that Arrowood Indemnity Company (“Arrowood”) is a Delaware corporation, that Arrowood was formerly known as and/or is successor to Royal Indemnity Company, and that Arrowood and/or its predecessor issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 26 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.” NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 26.

27. Admitted that Chartis Specialty Insurance Company, now known as AIG Specialty Insurance Company (“Chartis Specialty”), is an Illinois corporation, that Chartis Specialty was formerly known as American International Specialty Lines Insurance Company, and that Chartis Specialty issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 27 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.” NFL Defendants

deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 27.

28. Admitted that Chartis Property Casualty Company, now known as AIG Property Casualty Company (“Chartis Property”), is a Pennsylvania corporation, that Chartis Property was formerly known as Birmingham Fire Insurance Company of Pennsylvania, and that Chartis Property issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 28 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.” NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 28.

29. Admitted that Continental Casualty Company (“Continental Casualty”) is an Illinois corporation and that Continental Casualty issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 29 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.” NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 29.

30. Admitted that Continental Insurance Company (“Continental Insurance”) is a Pennsylvania corporation and that Continental Insurance is successor to Niagara Fire Insurance Company, The Fidelity & Casualty Company of New York, and Harbor Insurance Company. Admitted that Continental Insurance and/or its predecessors issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 30 are denied on the basis that it is not clear what Travelers means by “at

all times relevant hereto.” NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 30.

31. Admitted that Illinois National Insurance Company (“Illinois National”) is an Illinois corporation and that Illinois National issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 31 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.” NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 31.

32. Admitted that Munich Reinsurance America, Inc. (“Munich”) is a Delaware corporation, that Munich was formerly known as American Re-Insurance Company, and that Munich issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 32 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.” NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 32.

33. Admitted that National Union Fire Insurance Company of Pittsburgh, PA, (“National Union”) is a Pennsylvania corporation and that National Union issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 33 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.” NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 33.

34. Admitted that New England Reinsurance Corporation (“New England”) is a Connecticut corporation and that New England issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 34

are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.”

NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 34.

35. NFL Defendants aver that OneBeacon Insurance Company, improperly pled as OneBeacon America Insurance Company and now known as Bedivere Insurance Company (“OneBeacon”), is a Pennsylvania corporation and that OneBeacon is successor to General Accident Fire and Life Assurance Corporation Ltd. Admitted that OneBeacon’s predecessor issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 35 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.” NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 35.

36. Admitted that Vigilant Insurance Company (“Vigilant”) is a New York corporation and that Vigilant issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 36 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.” NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 36.

37. Admitted that Westchester Fire Insurance Company (“Westchester”) is a Pennsylvania corporation and that Westchester and/or its predecessor issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 37 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.” NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 37.

38. Admitted that XL Insurance America, Inc. (“XL”) is a Delaware corporation and that XL issued one or more liability insurance policies to the NFL and/or NFL Properties. The remaining allegations in the last sentence of Paragraph 38 are denied on the basis that it is not clear what Travelers means by “at all times relevant hereto.” NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 38.

39. NFL Defendants deny knowledge or information sufficient to form a belief of the allegations in Paragraph 39.

40. NFL Defendants admit the allegations in Paragraph 40.

41. NFL Defendants admit that Travelers and/or its predecessors issued primary commercial general liability insurance policies to NFL Properties continuously for policy periods between March 31, 1984 and March 31, 1997.

42. NFL Defendants admit that Travelers’ predecessor issued umbrella liability insurance policies to NFL Properties continuously for policy periods between March 31, 1984 and March 31, 1997.

43. NFL Defendants admit the allegations in Paragraph 43.

44. NFL Defendants deny knowledge or information sufficient to form a belief of the allegations in Paragraph 44.

45. Admitted that Travelers and/or its predecessors issued excess liability insurance policies to the NFL that insured the NFL (and in many instances NFL Properties) continuously for policy periods between 1991 and 2002.

46. NFL Defendants deny the allegations in Paragraph 46.

47. NFL Defendants admit that many of the liability insurance policies at issue in this insurance coverage action were issued and/or delivered to the NFL and/or NFL Properties and/or their insurance representatives in New York County.

48. Admitted that NFL Properties and the NFL have been named as defendants in numerous lawsuits commenced by or on behalf of former NFL players and/or their families alleging that the NFL players have suffered neurocognitive injuries asserted to have arisen from concussive or subconcussive impacts in the course of their NFL playing careers, that most of these actions are part of the MDL proceeding in the U.S. District Court for the Eastern District of Pennsylvania, and that the MDL was established pursuant to a Transfer Order issued by the U.S. Judicial Panel on Multidistrict Litigation on or about January 31, 2012. NFL Defendants deny the remaining allegations in Paragraph 48, state that complaints in the Underlying Lawsuits speak for themselves, and refer to the complaints in the Underlying Lawsuits for the full contents thereof.

49. NFL Defendants deny that Paragraph 49 accurately reflects the allegations and causes of action in the Underlying Lawsuits, state that the pleadings in those lawsuits speak for themselves, and refer to those pleadings for the full contents thereof. NFL Defendants admit that a Master Administrative Long Form Complaint was filed in the MDL on June 7, 2012 and an Amended Master Administrative Long Form Complaint was filed on July 17, 2012. NFL Defendants aver that Short Form Complaints were also filed in the MDL proceeding and that the Class Settlement and the Amended Final Order and Judgment resolved, *inter alia*, a Plaintiffs' Class Action Complaint filed in the MDL proceeding on January 6, 2014.

50. NFL Defendants deny that Paragraph 50 accurately reflects the causes of action in the "Master Complaint[s]," state that those complaints, the Short Form complaints filed

in the MDL proceeding, and the complaints in the various Underlying Lawsuits speak for themselves, and refer to those complaints for the full contents thereof.

51. NFL Defendants deny the allegations in Paragraph 51 and state that the pleadings in the Underlying Lawsuits speak for themselves and refer to those pleadings for the full contents thereof.

52. Paragraph 52 states legal conclusions to which no response is required. To the extent a response is required, the allegations in the first, second, and fourth sentences of Paragraph 52 are denied.

53. NFL Defendants deny the allegations in Paragraph 53, except that they admit that Anastasia Danias Schmidt is one of the individuals responsible for overseeing the defense of the Underlying Lawsuits on behalf of the NFL and NFL Properties and that she is Senior Vice President and Chief Litigation Officer of the NFL and Assistant Secretary of NFL Properties.

54. NFL Defendants deny the allegations in Paragraph 54, except that they admit that the NFL and NFL Properties are being defended against the Underlying Lawsuits by the same law firms, including the firm Paul, Weiss, Rifkind, Wharton & Garrison LLP (“Paul Weiss”).

55. NFL Defendants deny the allegations in Paragraph 55, except that they admit that NFL Properties has demanded a defense from Discover and St. Paul, and NFL Defendants are demanding that Travelers fully comply with its contractual obligations, including its duties to indemnify NFL Defendants with respect to the Class Settlement, the Amended Final Order and Judgment, and any other underlying settlement or judgment.

56. NFL Defendants deny the allegations in Paragraph 56, except that they admit that NFL Properties has demanded a defense from Discover and St. Paul.

57. Admitted that Discover and St. Paul generally have the right and duty under their policies to defend NFL Properties with respect to any “suit” seeking “damages” that is potentially within the coverage of the policies. The remainder of Paragraph 57 states a legal conclusion to which no response is required; to the extent a response is required, NFL Defendants deny the allegations in Paragraph 57 and refer to the policies, which speak for themselves, and to applicable law.

58. NFL Defendants deny the allegations in Paragraph 58 except to admit that, in correspondence dated July 3, 2013, Travelers purported to offer, under a “full reservation of rights,” funding for separate defense counsel for NFL Properties, but did so unjustifiably and in bad faith after nearly two years of failing to defend NFL Properties against the Underlying Lawsuits, and that NFL Properties rejected the purported “offer.”

59. NFL Defendants deny the allegations in Paragraph 59 except that they admit that on July 8, 2013 the district court presiding over the MDL entered an order directing representatives of the parties in the MDL to engage in mediation and that the NFL and NFL Properties were represented by, among others, the Paul Weiss firm in those discussions.

60. NFL Defendants deny that Paragraph 60 accurately reflects the negotiating history of the parties to the MDL with respect to what culminated in the Class Settlement. NFL Defendants admit that NFL Defendants entered into two proposed class settlement agreements in the Underlying Lawsuits.

61. Admitted that the district court presiding over the MDL proceeding certified a settlement class and granted final approval of a class settlement in a Final Order and Judgment on April 22, 2015, which order was replaced by an Amended Final Order and Judgment on May 8, 2015, which amended order was the subject of a clarifying order on May 11, 2015. Admitted

that on April 18, 2016 the U.S. Court of Appeals for the Third Circuit affirmed the district court's orders approving the Class Settlement and that on June 1, 2016, the Third Circuit denied petitions for rehearing *en banc*. NFL Defendants further aver that certain objector-appellants to the Class Settlement filed petitions for writs of certiorari in the Supreme Court of the United States, that such petitions were denied on December 12, 2016, and that the objector-appellants had until and through January 6, 2017 to petition the Supreme Court for rehearing. NFL Defendants further aver that the objector-appellants did not petition for rehearing on or before the January 6, 2017 deadline.

62. NFL Defendants deny that Paragraph 62 accurately reflects the obligations of NFL Defendants under the Class Settlement and state that the Class Settlement speaks for itself.

63. NFL Defendants admit the allegations in Paragraph 63.

64. NFL Defendants admit that, during the negotiations leading up to the Class Settlement, Travelers never affirmatively consented to the Class Settlement and at times purported to disagree with certain settlement terms. NFL Defendants aver that they had no obligation to seek or secure consent from Travelers and that any withholding of consent by Travelers is of no legal effect and in any event was unreasonable and done in bad faith. The remaining allegations in Paragraph 64 are denied.

65. NFL Defendants admit that they are demanding that Travelers indemnify NFL Defendants for costs incurred in connection with and damages imposed under the Class Settlement, the Amended Final Order and Judgment, and any other settlement or judgment that becomes final and effective in the Underlying Lawsuits. NFL Defendants deny that Travelers has numerous defenses to coverage for the Underlying Lawsuits and the Class Settlement.

66. Paragraph 66 is not sufficiently pleaded in that it is not clear what Travelers means by its “positions with respect to insurance coverage”; to the extent a response is required, NFL Defendants admit that they dispute many positions that Travelers has taken and otherwise refer to their responses to Paragraphs 1 through 65 in this Amended Answer and state that Travelers has coverage obligations to NFL Defendants.

67. NFL Defendants deny knowledge or information sufficient to form a belief of the allegations in Paragraph 67 except to admit that certain other insurers may dispute certain of Travelers’ positions and to state that other insurers have not objected to the NFL and NFL Properties using the same law firms to defend them in the Underlying Lawsuits and that various other insurers will not contend that they are relieved of coverage obligations on the purported ground that the Class Settlement was entered into without their consent.

68. NFL Defendants respond to the allegations contained in Paragraphs 1 through 67 of the Amended Complaint as set forth in Paragraphs 1 through 67 of this Amended Answer, which are incorporated by reference herein.

69. NFL Defendants deny knowledge or information sufficient to form a belief of the allegations in Paragraph 69.

70. NFL Defendants deny the allegations in Paragraph 70.

71. NFL Defendants admit the allegations in Paragraph 71 are true as to the defense arrangements that have been in place in the Underlying Lawsuits.

72. NFL Defendants admit that NFL Defendants assert that NFL Properties is not obligated to pay a share of defense costs with respect to the Underlying Lawsuits for years during which NFL Properties is self-insured or otherwise uninsured. NFL Defendants deny that NFL Properties has any obligation, equitable or otherwise, to pay such a share of defense costs.

73. NFL Defendants deny the allegations in Paragraph 73.

74. Paragraph 74 is not sufficiently pleaded in that it generally refers to “the foregoing issues”; to the extent a response is required, NFL Defendants admit that an actual controversy currently exists between Discover and St. Paul on the one hand and NFL Properties on the other regarding Discover and St. Paul’s duties to defend.

75. NFL Defendants deny the allegations in Paragraph 75.

76. Paragraph 76 states a legal conclusion to which no response is required; to the extent a response is required, NFL Defendants deny the allegations in Paragraph 76.

77. NFL Defendants respond to the allegations contained in Paragraphs 1 through 76 of the Amended Complaint as set forth in Paragraphs 1 through 76 of this Amended Answer, which are incorporated by reference herein.

78. NFL Defendants admit that they are demanding that Travelers indemnify them for costs incurred in connection with and damages imposed under the Class Settlement, the Amended Final Order and Judgment, and any other final and effective settlement or judgment in the Underlying Lawsuits.

79. NFL Defendants deny the allegations in Paragraph 79.

80. NFL Defendants admit that they assert that the NFL and NFL Properties are not obligated to bear without insurance reimbursement “indemnity” with respect to all periods during which they are “self-insured or otherwise uninsured” and that in appropriate circumstances they may “select” the policy or policies that are required to fund settlements or judgments in the Underlying Lawsuits. NFL Defendants deny knowledge or information sufficient to form a belief of the remaining allegations in Paragraph 80.

81. NFL Defendants admit that Travelers has coverage obligations under its policies for costs incurred in connection with and damages imposed under the Class Settlement and the Amended Final Order and Judgment, and that Travelers may have coverage obligations for costs incurred and damages imposed under any other settlement or judgment that becomes final and effective in the Underlying Lawsuits.

82. NFL Defendants admit the allegations in Paragraph 82.

83. NFL Defendants deny knowledge or information sufficient to form a belief of the allegations in Paragraph 83.

84. Paragraph 84 is not sufficiently pleaded in that it generally refers to “the foregoing issues”; to the extent a response is required, NFL Defendants admit that an actual controversy currently exists between Travelers on the one hand and NFL Defendants on the other regarding Travelers’ duties to indemnify NFL Defendants for costs incurred in connection with and damages imposed under the Class Settlement, the Amended Final Order and Judgment, and any other settlement or judgment that becomes final and effective in the Underlying Lawsuits.

85. NFL Defendants deny the allegations in Paragraph 85.

86. Paragraph 86 states a legal conclusion to which no response is required; to the extent a response is required, NFL Defendants deny the allegations in Paragraph 86.

87. The allegations in Count III of the Amended Complaint and in particular Paragraph 87 are not directed at NFL Defendants and thus no response is required. To the extent a response is required, NFL Defendants respond to the allegations contained in Paragraphs 1 through 86 of the Amended Complaint as set forth in Paragraphs 1 through 86 of this Amended Answer, which are incorporated by reference herein.

88. The allegations in Count III of the Amended Complaint and in particular Paragraph 88 are not directed at NFL Defendants and thus no response is required. To the extent a response is required, NFL Defendants deny knowledge or information sufficient to form a belief of the allegations in Paragraph 88 except to admit that certain other insurers may dispute certain of Travelers' positions and to state that other insurers have not objected to the NFL and NFL Properties using the same law firms to defend them in the Underlying Lawsuits and that various other insurers will not contend that they are relieved of coverage obligations on the purported ground that the Class Settlement was entered into without their consent.

89. The allegations in Count III of the Amended Complaint and in particular Paragraph 89 are not directed at NFL Defendants and thus no response is required. To the extent a response is required, NFL Defendants deny knowledge or information sufficient to form a belief of the allegations in Paragraph 89.

90. The allegations in Count III of the Amended Complaint and in particular Paragraph 90 are not directed at NFL Defendants and thus no response is required. To the extent a response is required, NFL Defendants deny the allegations in Paragraph 90.

91. The allegations in Count III of the Amended Complaint and in particular Paragraph 91 are not directed at NFL Defendants, further, the allegations in Paragraph 91 state a legal conclusion and thus no response is required. To the extent a response is required, NFL Defendants deny the allegations in Paragraph 91.

To the extent not expressly admitted herein, the allegations of the Amended Complaint are denied.

AND AS FOR THEIR DEFENSES, NFL Defendants assert the following defenses in the alternative, without assuming any burden that the law would not otherwise impose, and without waiver of their specific denials set forth above.

First Affirmative Defense

Some or all of the claims asserted in the Amended Complaint fail to state a claim upon which relief can be granted.

Second Affirmative Defense

Some or all of the claims asserted in the Amended Complaint are barred, in whole or in part, by the terms of the insurance policies at issue.

Third Affirmative Defense

Some or all of the claims asserted in the Amended Complaint are barred, in whole or in part, by the doctrines of waiver, ratification, and/or estoppel.

Fourth Affirmative Defense

Some or all of the claims asserted in the Amended Complaint are barred, in whole or in part, by Discover and St. Paul's breaches of their contractual obligations and their breaches of their duties of good faith and fair dealing in connection with the duty to defend, as well as other failures by Travelers to comply with their obligations, express or implied, under the insurance policies, including their duties of good faith and fair dealing.

Fifth Affirmative Defense

Some or all of the claims asserted in the Amended Complaint are barred, in whole or in part, by Travelers' dilatory conduct and the doctrine of laches.

Sixth Affirmative Defense

Some or all of the claims asserted in the Amended Complaint are barred, in whole or in part, because NFL Defendants' claims for insurance coverage are within the terms of the policies issued by Travelers and are not excluded therefrom.

Seventh Affirmative Defense

Some or all of the claims asserted in the Amended Complaint are barred, in whole or in part, by Discover and St. Paul's breaches of contract, including the duty of good faith and fair dealing.

Eighth Affirmative Defense

NFL Defendants give notice that they intend to rely upon such other defenses that are or may become available by contract or law, or pursuant to statute, or during any discovery or further proceedings in this action, and hereby reserve the right to further amend their answer to the Amended Complaint and assert such defenses.

WHEREFORE, NFL Defendants respectfully request that the Court enter
Judgment:

- a. Declaring that Travelers is not entitled to any of the relief claimed against NFL Defendants;
- b. Awarding NFL Defendants their attorneys' fees and costs incurred in connection with this action; and
- c. Granting such other and further relief as the Court may deem just and proper.

**SECOND AMENDED COUNTERCLAIMS AND CROSS-CLAIMS OF
NATIONAL FOOTBALL LEAGUE AND NFL PROPERTIES LLC**

The NFL and NFL Properties hereby allege the following counterclaims against counterclaim defendants Discover, St. Paul, Travelers Casualty, Travelers Indemnity, Travelers Property, and Pacific Indemnity Company (“Pacific”), and allege the following cross-claims against cross-claim defendants ACE, Allstate, Alterra, American Guarantee, Arrowood, Century, Chartis Property, Chartis Specialty, Continental Casualty, Continental Insurance, Federal, Great Northern, Guarantee, Hartford, Illinois National, Illinois Union, Munich, National Union, New England, North River, OneBeacon, TIG, U.S. Fire, Vigilant, Westchester, Westport Insurance Corporation (“Westport”), XL, and XL Select Insurance Company (“XL Select”). The above-identified parties are hereinafter referred to as “the Insurers.”

Discover, St. Paul, TIG, Illinois Union, North River, U.S. Fire, Guarantee, Hartford, Century, Great Northern, Federal, OneBeacon, Chartis Property, and Pacific (together, and hereinafter referred to as the “Duty to Defend Insurers”) issued primary, duty to defend liability insurance policies to the NFL and/or NFL Properties for policy periods between no later than May 18, 1960 and November 20, 2003. These counterclaims and cross-claims seek declaratory relief and money damages arising from the Duty to Defend Insurers’ ongoing breach of their respective contractual obligations to defend the NFL and/or NFL Properties against the Underlying Lawsuits.

The Insurers issued primary, umbrella, and excess liability insurance policies to the NFL and/or NFL Properties for policy periods between no later than May 18, 1960 and August 1, 2012. The NFL and NFL Properties seek money damages arising out of certain of the Insurers’ breach of their obligations under their respective policies to pay on behalf of the NFL and NFL Properties costs incurred in connection with and damages imposed under the Class

Settlement and the Amended Final Order and Judgment. The NFL and NFL Properties also seek declaratory relief as to all of the Insurers' rights and obligations under their respective policies to pay on behalf of the NFL and/or NFL Properties costs incurred and damages imposed under the Class Settlement and the Amended Final Order and Judgment, and any other settlement or judgment that may become final and effective in the Underlying Lawsuits.

Additionally, the NFL and NFL Properties seek a declaration that certain of the Insurers unjustifiably and in bad faith refused to consent to the Class Settlement.

The NFL and NFL Properties demand answers to these cross-claims and replies to these counterclaims and fully reserve the right to amend or supplement these counterclaims and cross-claims based on developments in this action, in connection with the Underlying Lawsuits, or otherwise. In asserting these cross-claims and counterclaims, the NFL and NFL Properties do not thereby assume any burden the law would not otherwise impose.

The NFL Parties

1. The NFL is an unincorporated association headquartered in New York, comprised of thirty-two member clubs located throughout the United States.

2. NFL Properties is a limited liability company organized under the laws of Delaware, with headquarters in New York. NFL Properties is the successor to National Football League Properties, Inc., a California corporation formed in 1963. From 1963 through at least 1970, National Football League Properties, Inc.'s principal place of business was in California.

The Insurance Policies

3. Cross-claim Defendant TIG and/or its predecessor issued primary, duty-to-defend, general liability insurance policies to the NFL continuously for policy periods between October 20, 1987 and November 20, 2002, and the policies issued for the periods between

November 20, 1993 and November 20, 2002 insure NFL Properties or its predecessor National Football League Properties, Inc., as well as the NFL. TIG and/or its predecessor issued umbrella and/or excess liability insurance policies to the NFL continuously for policy periods between October 20, 1989 and November 20, 2002, and the policies issued for the periods between November 20, 1993 and November 20, 2002 insure NFL Properties or its predecessor National Football League Properties, Inc., as well as the NFL.

4. Cross-claim Defendant Illinois Union issued primary, general liability insurance policies to the NFL and NFL Properties continuously for policy periods between November 20, 2002 and August 1, 2006, one or more of which imposes a duty to defend on Illinois Union.

5. Cross-claim Defendant North River issued primary, duty-to-defend, general liability insurance policies to the NFL continuously for policy periods between October 20, 1978 and October 20, 1981, and continuously for policy periods between October 20, 1985 and October 20, 1987.

6. Cross-claim Defendant U.S. Fire issued primary, duty-to-defend, general liability insurance policies to the NFL continuously for policy periods between October 20, 1981 and October 20, 1985.

7. Cross-claim Defendant Guarantee issued a primary, duty-to-defend, general liability insurance policy to the NFL for the policy period October 20, 1977 to October 20, 1978.

8. Cross-claim Defendant Hartford issued primary, duty-to-defend, general liability insurance policies to the NFL continuously for policy periods between September 5, 1970 and September 20, 1976. Hartford issued an umbrella liability insurance policy and an

excess liability insurance policy to National Football League Properties, Inc. for the policy period March 31, 1980 to March 31, 1981.

9. Cross-claim Defendant Century's predecessor(s) issued primary, duty-to-defend, liability insurance policies to the NFL continuously for policy periods between no later than May 18, 1960 and through at least December 18, 1968. Century's predecessors issued excess liability insurance policies to the NFL continuously for policy periods between October 20, 1987 and October 20, 1989, and continuously for policy periods between November 20, 1996 and November 20, 2000. The excess liability policies issued for the periods between November 20, 1996 and November 20, 2000 insure National Football League Properties, Inc., as well as the NFL.

10. Cross-claim Defendant Great Northern issued one or more primary, duty-to-defend, general liability insurance policies to National Football League Properties, Inc. continuously for policy period(s) between March 31, 1997 and April 1, 2000.

11. Counterclaim Defendant Discover issued primary, duty-to-defend, general liability insurance policies to National Football League Properties, Inc. for the policy period March 31, 1988 to March 31, 1989, and for the policy period March 31, 1996 to March 31, 1997.

12. Counterclaim Defendant St. Paul's predecessor issued primary, duty-to-defend, general liability insurance policies to National Football League Properties, Inc. continuously for policy periods between March 31, 1984 and March 31, 1988, and continuously for policy periods between March 31, 1989 and March 31, 1996. St. Paul's predecessor issued umbrella liability insurance policies to National Football League Properties, Inc. continuously for policy periods between March 31, 1984 and March 31, 1997.

13. Cross-claim Defendant Federal issued primary, duty-to-defend, general liability insurance policies to National Football League Properties, Inc. continuously for policy periods between April 1, 1973 and November 10, 1978, and continuously for policy periods between March 31, 1981 and March 31, 1984. Federal issued excess liability insurance policies to the NFL continuously for policy periods between December 12, 1985 and October 20, 1987, continuously for policy periods between October 20, 1989 and November 20, 1996, and the policies issued for periods between November 20, 1993 and November 20, 1996 insure National Football League Properties Inc., as well as the NFL. Federal issued excess liability insurance policies to the NFL and NFL Properties for the policy period November 20, 2002 to November 20, 2003, and for the policy period August 1, 2010 to August 1, 2011. Federal issued umbrella liability insurance policies to National Football League Properties, Inc. for the policy period March 31, 1981 to March 31, 1982, and continuously for policy periods between October 7, 1996 and April 1, 2000.

14. Cross-claim Defendant OneBeacon's predecessor issued a primary, duty-to-defend, general liability insurance policy to National Football League Properties, Inc. for the policy period March 31, 1980 to March 31, 1981.

15. Cross-claim Defendant Chartis Property issued one or more primary, duty-to-defend, general liability insurance policies to National Football League Properties, Inc. for policy period(s) between November 10, 1978 and March 31, 1980.

16. Counterclaim Defendant Pacific is a corporation organized under the laws of Wisconsin. Pacific issued primary, duty-to-defend, general liability insurance policies to National Football League Properties, Inc. continuously for policy periods between no later than February 10, 1968 and April 1, 1973.

17. Cross-claim Defendant ACE issued primary, general liability insurance policies to the NFL and NFL Properties continuously for policy periods between August 1, 2006 and August 1, 2012.

18. Cross-claim Defendant Allstate's predecessor issued excess liability insurance policies to the NFL continuously for policy periods between October 20, 1978 and October 20, 1981. The policy issued for the policy period October 20, 1978 to October 20, 1979 insures National Football League Properties, Inc., as well as the NFL.

19. Cross-claim Defendant Alterra issued an excess liability insurance policy to the NFL and NFL Properties for the policy period August 1, 2011 to August 1, 2012.

20. Cross-claim Defendant American Guarantee issued an excess liability insurance policy to the NFL and NFL Properties for the policy period November 20, 2001 to November 20, 2002.

21. Cross-claim Defendant Arrowood and/or its predecessor issued an excess liability insurance policy to the NFL for the policy period November 20, 1991 to November 20, 1992.

22. Cross-claim Defendant Chartis Specialty issued umbrella liability insurance policies to the NFL and NFL Properties continuously for policy periods between November 20, 2002 and August 1, 2006.

23. Cross-claim Defendant Continental Casualty issued an umbrella liability insurance policy to the NFL and National Football League Properties, Inc. for the policy period September 5, 1973 to September 20, 1976.

24. Cross-claim Defendant Continental Insurance and/or its predecessors issued excess liability insurance policies to the NFL continuously for policy periods between October

20, 1987 and October 20, 1989, for the policy period January 25, 1991 to November 20, 1991, and continuously for policy periods between November 20, 1993 and November 20, 1996. The policies issued between the periods November 20, 1993 and November 20, 1996 insure National Football League Properties, Inc., as well as the NFL.

25. Cross-claim Defendant Illinois National issued an umbrella liability insurance policy to the NFL and NFL Properties for the policy period August 1, 2006 to August 1, 2007.

26. Cross-claim Defendant Munich issued an excess liability insurance policy to the NFL and National Football League Properties, Inc. for the policy period September 12, 1973 to September 5, 1976.

27. Cross-claim Defendant National Union issued an excess liability insurance policy to the NFL for the policy period January 24, 1991 to January 24, 1992 and issued umbrella liability insurance policies to the NFL and NFL Properties continuously for policy periods between August 1, 2007 and August 1, 2012.

28. Cross-claim Defendant New England issued excess liability insurance policies to the NFL continuously for the policy periods between October 20, 1981 and October 20, 1984.

29. Counterclaim Defendant Travelers Casualty's predecessor issued excess liability insurance policies to the NFL continuously for policy periods between November 20, 1991 and November 20, 1996. The policies issued for policy periods between November 20, 1993 and November 20, 1996 insure National Football League Properties, Inc., as well as the NFL.

30. Counterclaim Defendant Travelers Indemnity's predecessor issued excess liability insurance policies to the NFL continuously for policy periods between November 20,

1998 and November 20, 2002, which policies also insure NFL Properties or its predecessor National Football League Properties, Inc.

31. Counterclaim Defendant Travelers Property issued excess liability insurance policies to the NFL continuously for the policy periods between November 20, 1996 to November 20, 1998, which policies also insure National Football League Properties, Inc.

32. Cross-claim Defendant Vigilant issued excess and/or umbrella liability insurance policies to the NFL continuously for policy periods between November 20, 1996 and November 20, 2002 and continuously for policy periods between November 20, 2003 and August 1, 2010, which policies also insure NFL Properties or its predecessor National Football League Properties, Inc.

33. Cross-claim Defendant Westchester is successor in interest to and/or is responsible for certain policies issued by International Insurance Company and The North River Insurance Company. Westchester and/or its predecessors (or companies for which Westchester and/or its predecessors are responsible) issued excess and/or umbrella liability insurance policies to the NFL for the policy period October 20, 1984 to October 20, 1985, continuously for policy periods between October 20, 1987 to October 20, 1990, and for the policy period November 20, 1991 to November 29, 1992. Westchester issued excess liability insurance policies to the NFL and NFL Properties or National Football League Properties, Inc. continuously for policy periods between November 20, 2000 and August 1, 2005. Westchester and/or its predecessor (or companies for which Westchester and/or its predecessors are responsible) issued an excess liability insurance policy to National Football League Properties, Inc. for the policy period January 20, 1991 to February 2, 1991.

34. Cross-claim Defendant Westport is a corporation organized under the laws of Missouri. Westport is successor in interest to or was formerly known as Employers Reinsurance Corporation. Westport and/or its predecessor issued umbrella liability insurance policies to the NFL and National Football League Properties, Inc. continuously for policy periods between September 5, 1968 and September 5, 1973.

35. Cross-claim Defendant XL issued excess liability insurance policies to the NFL and NFL Properties continuously for policy periods between August 1, 2006 and August 1, 2012.

36. Cross-claim Defendant XL Select is a corporation organized under the laws of Delaware. XL Select issued an excess liability insurance policy to the NFL and NFL Properties for the policy period August 1, 2005 to August 1, 2006.

37. Each of the primary, duty-to-defend, liability insurance policies issued to the NFL and/or NFL Properties and its predecessor (identified in Paragraphs 3-16 above) impose on the issuing Duty to Defend Insurer a duty to defend any suit against the NFL and/or NFL Properties on account of bodily or personal injury covered or potentially covered by the policy, even if the allegations of the suit are groundless, false, or fraudulent (the “duty to defend”).

38. The duty to defend stated in the policies encompasses the entirety of the suit or defense efforts even if only some of the asserted claims are potentially covered, and even if not all of the alleged injury allegedly took place during the policy period.

39. Each of the primary, umbrella, and excess liability insurance policies issued to the NFL and/or NFL Properties and its predecessor (identified in Paragraphs 3-36 above) impose on the issuing insurer a duty to pay on behalf of the NFL and/or NFL Properties all sums that the insured becomes legally obligated to pay as damages because of, *inter alia*, bodily or personal

injury caused by accidents or occurrences (the “duty to indemnify”). The contractual obligation of each Insurer to pay such damages in full on behalf of the NFL and/or NFL Properties is subject only to the upper or underlying limits of liability, if any, expressly and unambiguously stated in each policy.

40. The primary, umbrella, and excess general liability insurance policies issued for policy periods between March 4, 1965 and August 1, 2012 are “occurrence policies,” under which the issuing insurers’ duties to indemnify are triggered by bodily or personal injury during the respective policy periods.

41. Indemnity obligations under the primary liability insurance policies issued for policy periods between May 18, 1960 and March 4, 1965 are triggered by an “accident” that occurs during the respective policy periods, which results in bodily injury.

42. The NFL and NFL Properties have paid all premiums due under all policies identified in Paragraphs 3-36, and all conditions to coverage under such policies have been performed, have occurred, or have been excused, satisfied, or waived.

The Underlying Lawsuits and Class Settlement

43. The NFL has been named as a defendant in more than 300 Underlying Lawsuits, including one or more putative class action lawsuits, brought by former NFL players and/or their family members or representatives alleging that the NFL players have suffered neurocognitive or related injuries asserted to have arisen from concussive or subconcussive impacts in the course of their NFL playing careers. NFL Properties has been named as a defendant in more than 190 of the Underlying Lawsuits. Virtually all of those Underlying Lawsuits have been transferred to and centralized in a single multi-district litigation proceeding

in the U.S. District Court for the Eastern District of Pennsylvania. The Underlying Lawsuits include a certified settlement class, which is part of the MDL proceedings.

44. The NFL and NFL Properties retained Paul Weiss as lead defense counsel in the Underlying Lawsuits and engaged additional law firms in certain jurisdictions. To date, the NFL and NFL Properties have incurred more than \$30 million in costs defending against the Underlying Lawsuits.

45. On July 8, 2013, the district court presiding over the MDL entered an order directing representatives of the parties in the MDL to engage in mediation before retired Judge Layn Phillips to determine whether a negotiated resolution could be achieved.

46. On August 29, 2013, the parties reached an agreement in principle to resolve the dispute. The parties subsequently executed a definitive settlement agreement as of January 6, 2014 and sought preliminary approval of their proposed settlement from the district court presiding over the MDL.

47. On December 16, 2013, the district court presiding over the MDL entered an order appointing Perry Golkin to serve as Special Master to assist the court in evaluating the proposed settlement. On January 14, 2014, the district court denied preliminary approval.

48. After several more months of negotiations, on June 25, 2014, the NFL and NFL Properties entered into a Class Action Settlement Agreement, which was thereafter amended on February 13, 2015.

49. The Class Settlement was approved by the U.S. District Court for the Eastern District of Pennsylvania in a Final Order and Judgment entered on April 22, 2015. The district court subsequently entered an Amended Final Order and Judgment on May 8, 2015, which was later the subject of a clarifying order on May 11, 2015. Certain objectors appealed the district

court's orders to the U.S. Court of Appeals for the Third Circuit. On April 18, 2016, the Third Circuit affirmed the district court's orders approving the Class Settlement. Certain objector-appellants petitioned the Third Circuit for rehearing *en banc* on April 28, 2016 and May 2, 2016. The Third Circuit denied the petitions for rehearing on June 1, 2016.

50. On August 30, 2016 and September 26, 2016, certain objector-appellants petitioned the Supreme Court of the United States for writs of certiorari. On December 12, 2016, the Supreme Court denied the objector-appellants' petitions. The objector-appellants had until and through January 6, 2017 to petition the Supreme Court for rehearing, but did not file for such rehearing.

51. The Class Settlement and the district court's Amended Final Order and Judgment became final and effective on January 7, 2017, the date on which no future appeal of the approval order was possible.

52. Under the terms of the Class Settlement, beginning no later than 30 days after the effective date of the Class Settlement, the NFL and NFL Properties are required to make initial payments of damages in the amounts of (i) \$20 million into the Settlement Trust Account for transfer by the Trustee into the Monetary Award Fund, (ii) \$35 million into the Settlement Trust Account for transfer by the Trustee into the Baseline Assessment Program Fund, and (iii) \$10 million into the Settlement Trust Account for transfer by the Trustee into the Education Fund. The foregoing initial payments were completed on or about February 6, 2017.

53. As set out more fully in the Class Settlement, the NFL and NFL Properties are required to make subsequent payments of damages into the Monetary Award Fund sufficient to make all payments to class members for 65 years from the effective date of the Class Settlement.

54. As set out more fully in the Class Settlement, the NFL and NFL Properties are required to make subsequent payments of damages into the Baseline Assessment Program Fund up to a maximum of \$75 million, except that additional payments will be required to be made into the fund to the extent necessary to provide every qualified NFL player with one baseline assessment examination.

55. More than 150 retired NFL football players or their family members or representatives have opted out of the Class Settlement and at least 70 of the opt-out plaintiffs have continued to pursue their claims against one or both of the NFL and NFL Properties in litigation. The remaining opt-out plaintiffs may also pursue their claims against the NFL and/or NFL Properties.

56. The NFL and NFL Properties provided the Insurers information regarding the Underlying Litigation and the negotiations that culminated in the Class Settlement.

57. On repeated occasions, the NFL and NFL Properties sought the Insurers' consent to the Class Settlement although such consent was unnecessary, *inter alia*, because of the Insurers' repudiation of their coverage obligations.

58. In response to the NFL and NFL Properties' requests for consent, Federal, Great Northern, Hartford, Munich, New England, Pacific, Vigilant, XL, and XL Select expressly agreed that they would not raise lack of consent and/or policy provisions related to voluntary payments as a defense to coverage for the Class Settlement. Three other general liability insurers of the NFL and NFL Properties, Fireman's Fund Insurance Company, Interstate Indemnity Company, and Interstate Fire & Casualty Company, likewise agreed that they would not raise lack of consent and/or policy provisions related to voluntary payments as a defense to coverage for the Class Settlement.

59. In response to the NFL and NFL Properties' requests for consent, ACE, Allstate, Alterra, American Guarantee, Arrowood, Century, Chartis Property, Chartis Specialty, Continental Casualty, Continental Insurance, Discover, Guarantee, Illinois National, Illinois Union, National Union, North River, OneBeacon, St. Paul, TIG, Travelers Casualty, Travelers Indemnity, Travelers Property, U.S. Fire, and Westchester either unjustifiably and in bad faith failed to respond to one or more requests for consent and/or refused to consent to the Class Settlement.

60. By unjustifiably and in bad faith failing to respond to one or more requests for consent and/or refusing to consent to the Class Settlement, ACE, Allstate, Alterra, American Guarantee, Arrowood, Century, Chartis Property, Chartis Specialty, Continental Casualty, Continental Insurance, Discover, Guarantee, Illinois National, Illinois Union, National Union, North River, OneBeacon, St. Paul, TIG, Travelers Casualty, Travelers Indemnity, Travelers Property, U.S. Fire, and Westchester elevated their own interests over the interests of their insureds and/or attempted to defeat the NFL's and NFL Properties' rights to receive benefits under their respective insurance contracts.

Duty to Defend Insurers' Failures to Defend

61. The NFL and NFL Properties have notified the Duty to Defend Insurers of the Underlying Lawsuits and demanded that each Duty to Defend Insurer honor its contractual obligations in connection with the defense of the Underlying Lawsuits.

62. TIG, North River, U.S. Fire, Guarantee, Hartford, Century, Great Northern, Discover, St. Paul, Federal, OneBeacon, and Pacific have each acknowledged that their obligations to defend the NFL and/or NFL Properties were triggered by the Underlying Lawsuits. However, North River and U.S. Fire initially denied coverage prior to acknowledging a defense

obligation and Century has denied coverage under policies issued for policy periods between May 18, 1960 and March 4, 1965.

63. Despite acknowledging the existence of a defense obligation, TIG, North River, U.S. Fire, Guarantee, Hartford, Century, Great Northern, Discover, St. Paul, Federal, OneBeacon, and Pacific have each unjustifiably and in bad faith delayed, refused and failed to fully perform their defense obligations in accordance with their policy obligations in response to the Underlying Lawsuits.

64. Chartis Property and Illinois Union have each failed to acknowledge its obligations to defend against the Underlying Lawsuits, and have unjustifiably and in bad faith refused and failed to perform their respective defense obligations in accordance with their policy obligations in response to the Underlying Lawsuits.

65. As of December 2016, the NFL and NFL Properties have incurred and submitted to the Duty to Defend Insurers for reimbursement more than \$30 million in defense costs for the Underlying Lawsuits. The NFL and NFL Properties have, on a delayed basis, been reimbursed for less than half of the defense costs submitted in connection with the Underlying Lawsuits and will continue to incur defense costs as a result of the Underlying Lawsuits.

Insurers' Repudiation of Their Indemnity Obligations

66. The NFL and NFL Properties notified the Insurers that the Class Settlement and the district court's Amended Final Order and Judgment became final and effective on January 7, 2017.

67. As a result of the Class Settlement and the Amended Final Order and Judgment, the NFL and NFL Properties are legally obligated to incur costs and pay damages because of bodily injury occurring during the policy periods of the Insurers' respective policies

and continuing thereafter (and/or bodily injury resulting from accidents occurring during such policy periods). The NFL and NFL Properties may become legally obligated to incur costs or pay damages under other settlements and/or judgments in the Underlying Lawsuits.

68. The Insurers are obligated to pay on behalf of the NFL and/or NFL Properties all sums and costs incurred in connection with and damages imposed under the Class Settlement and the Amended Final Order and Judgment. If damages are imposed on the NFL and/or NFL Properties under any other settlement or judgment in the Underlying Lawsuits, one or more of the Insurers' will have a duty to indemnify the NFL and/or NFL Properties for costs incurred and damages imposed under such settlement or judgment.

69. The Insurers have repudiated and/or, on information and belief, will repudiate their obligations to indemnify the NFL and NFL Properties for payments made pursuant to the Class Settlement and Amended Final Order and Judgment, and any other settlement or judgment that becomes final in the Underlying Lawsuits.

Count I—Cause of Action for Breach of Contract as to the Duty to Defend

(As and for a Counterclaim Against Discover, St. Paul, and Pacific and Cross-claims Against the Remaining Duty to Defend Insurers)

70. The NFL and NFL Properties repeat and incorporate by reference the allegations set forth in Paragraphs 1 through 69 of these Second Amended Counterclaims and Cross-claims, inclusive, as though set forth in full herein.

71. The Duty to Defend Insurers have unjustifiably and in bad faith refused and failed to fully defend the NFL (TIG, Illinois Union, North River, U.S. Fire, Guarantee, Hartford, and Century) and NFL Properties (TIG, Illinois Union, Great Northern, Discover, St. Paul, Federal, OneBeacon, Chartis Property, and Pacific) in and against the Underlying Lawsuits in accordance with their policy obligations.

72. The Duty to Defend Insurers, in unjustifiably refusing and failing to fully defend the NFL and/or NFL Properties in and against the Underlying Lawsuits in accordance with their policy obligations, have breached and continue to breach their contractual duties to provide a complete defense to the NFL and NFL Properties, including their duties of good faith and fair dealing.

73. As a direct and proximate result of the Duty to Defend Insurers' breach of their express and implied contractual duties to provide a complete defense to the NFL and/or NFL Properties in and against the Underlying Lawsuits, the NFL and NFL Properties have suffered damages in attorneys' fees, costs, and expenses incurred to defend against those claims, and they are entitled to recover such damages in an amount to be proved at trial. The NFL and NFL Properties' damages as a result of the Duty to Defend Insurers' breaches are continuing, and they reserve their right to seek the full and exact amount of their damages at the time of trial.

Count II—Cause of Action for Declaratory Relief as to the Duty to Defend

(As and for a Counterclaim Against Discover, St. Paul, and Pacific and Cross-claims Against the Remaining Duty to Defend Insurers)

74. The NFL and NFL Properties repeat and incorporate by reference the allegations set forth in Paragraphs 1 through 73 of these Second Amended Counterclaims and Cross-claims, inclusive, as though set forth in full herein.

75. The NFL and NFL Properties seek a judicial determination of the Duty to Defend Insurers' rights and obligations under the primary, duty-to-defend liability insurance policies identified in Paragraphs 3 through 16 above.

76. Each Duty to Defend Insurer is contractually obligated to provide a complete defense to the NFL and/or NFL Properties against any suit for damages on account of bodily or personal injury covered or potentially covered by their policies, even if the allegations of the suit

are groundless, false or fraudulent. The duty to defend encompasses the entirety of the suit or defense effort even if only some of the asserted claims are potentially covered, and even if only some of the alleged injury took place during the policy period.

77. The Underlying Lawsuits are continuing, and the NFL and NFL Properties anticipate that additional injury lawsuits making similar allegations may be filed in the future. The NFL and NFL Properties continue to need to mount a defense in and against the Underlying Lawsuits, and expect the need to defend against those suits will continue for some amount of time going forward.

78. Each of the Duty to Defend Insurers has failed to acknowledge and perform its duty to defend the NFL and/or NFL Properties fully in and against the Underlying Lawsuits in accordance with its policy obligations.

79. An actual and justiciable controversy exists between and among the NFL and NFL Properties and the Duty to Defend Insurers concerning the Duty to Defend Insurers' contractual duties to defend the NFL and NFL Properties fully in and against the Underlying Lawsuits.

80. The NFL and NFL Properties are entitled to a judicial determination and declaration that one or more of the Duty to Defend Insurers is obligated to fully defend the NFL and NFL Properties in and against the Underlying Lawsuits.

Count III—Cause of Action for Breach of the Duty to Indemnify the NFL and NFL Properties for the Class Settlement

(As and for a Counterclaim Against Discover, St. Paul, and Pacific, and Cross-claim Against Century, Hartford, Guarantee, North River, U.S. Fire, TIG, Illinois Union, ACE, Federal, Chartis Property, OneBeacon, Great Northern, Chartis Specialty, Illinois National, and National Union)

81. The NFL and NFL Properties repeat and incorporate by reference the allegations set forth in Paragraphs 1 through 80 of these Second Amended Counterclaims and Cross-claims, inclusive, as though set forth in full herein.

82. The NFL and/or NFL Properties are insured under primary liability insurance policies for policy periods between no later than May 18, 1960 and August 1, 2012 issued by Century, Hartford, Guarantee, North River, U.S. Fire, TIG, Illinois Union, ACE, Pacific, Federal, Chartis Property, OneBeacon, St. Paul, Discover, and Great Northern (as specified in Paragraphs 3 through 17 above).

83. The NFL and NFL Properties are insured under umbrella liability insurance policies for policy periods between November 20, 2000 and August 1, 2012 issued by TIG, Chartis Specialty, Illinois National, and National Union (as specified in Paragraphs 3, 22, 25, and 27 above).

84. Each insurer identified in Paragraphs 82 and 83 above is contractually obligated under its respective primary and/or umbrella policies to pay on behalf of the NFL and/or NFL Properties all sums the NFL and/or NFL Properties incurs in connection with or becomes legally obligated to pay as damages because of, *inter alia*, bodily or personal injury caused by occurrences or accidents. The contractual obligations of the above-identified insurers to pay such damages in full on behalf of the NFL and/or NFL Properties is subject only to the upper or underlying limits of liability, if any, expressly and unambiguously stated in each policy.

85. The insurers identified in Paragraphs 82 and 83 have refused and/or, on information and belief, will refuse to pay under their respective primary and/or umbrella policies on behalf of the NFL and/or NFL Properties costs incurred in connection with and damages

imposed under the Class Settlement and the Amended Final Order and Judgment, for bodily or personal injury caused by occurrences or accidents.

86. The insurers identified in Paragraphs 82 and 83, in refusing or failing to pay on behalf of the NFL and/or NFL Properties costs incurred in connection with and damages imposed under the Class Settlement and the Amended Final Order and Judgment have breached and continue to breach their contractual duties to indemnify the NFL and/or NFL Properties.

87. As a direct and proximate result of the breach by the insurers identified in Paragraphs 82 and 83 of their contractual duties under their respective primary and/or umbrella policies to indemnify the NFL and NFL Properties for costs incurred in connection with and damages imposed under the Class Settlement and the Amended Final Order and Judgment, the NFL and NFL Properties have suffered and will suffer additional damages and are entitled to recover such damages in an amount to be proved at trial, with prejudgment interest thereon at the maximum rate permitted by law. The NFL and NFL Properties' damages as a result of the breach by the insurers identified in Paragraphs 82 and 83 under their respective primary and/or umbrella policies are continuing, and they reserve their right to seek the full and exact amount of their damages at the time of trial.

Count IV—Cause of Action for Declaratory Relief as to the Duty to Indemnify the NFL and NFL Properties for the Class Settlement and Any Other Settlement or Judgment in the Underlying Lawsuits

(As and for a Counterclaim Against Discover, St. Paul, Travelers Casualty, Travelers Indemnity, Travelers Property, and Pacific, and Cross-claim Against the Remaining Insurers)

88. The NFL and NFL Properties repeat and incorporate by reference the allegations set forth in Paragraphs 1 through 87 of these Second Amended Counterclaims and Cross-claims, inclusive, as though set forth in full herein.

89. The NFL and NFL Properties seek a judicial determination of the Insurers' rights and obligations under the liability insurance policies identified in Paragraphs 3 through 36 above.

90. Each Insurer is contractually obligated to pay on behalf of the NFL and/or NFL Properties all sums the NFL and/or NFL Properties incurs in connection with or becomes legally obligated to pay as damages because of, *inter alia*, bodily or personal injury caused by occurrences or accidents. The contractual obligation of each Insurer to pay such costs and damages in full on behalf of the NFL and/or NFL Properties is subject only to the upper or underlying limits of liability, if any, expressly and unambiguously stated in each policy.

91. The NFL and NFL Properties have incurred costs in connection with and damages imposed under the Class Settlement and the Amended Final Order and Judgment for bodily or personal injury caused by occurrences or accidents and are entitled to indemnification from one or more of the Insurers for the same. The NFL and NFL Properties may become liable to pay damages and costs incurred under other settlements or judgments in the Underlying Lawsuits for which they are entitled to indemnification from one or more of the Insurers.

92. An actual and justiciable controversy exists between and among the NFL and NFL Properties and the Insurers concerning the Insurers' contractual duties to indemnify the NFL and NFL Properties with respect to the Class Settlement and the Amended Final Order and Judgment, and any other settlement or judgment that becomes final and effective in the Underlying Lawsuits.

93. The NFL and NFL Properties are entitled to a judicial determination and declaration as to the rights and obligations the Insurers with respect to indemnification of the NFL and/or NFL Properties for costs incurred in connection with and damages imposed under

the Class Settlement and the Amended Final Order and Judgment, and any other settlement or judgment that becomes final and effective in the Underlying Lawsuits.

Count V—Cause of Action for Declaratory Relief as to Certain Insurers' Bad Faith Refusal to Consent to the Class Settlement

(As and for a Counterclaim Against Discover, St. Paul, Travelers Casualty, Travelers Indemnity, and Travelers Property, and Cross-claim Against ACE, Allstate, Alterra, American Guarantee, Arrowood, Century, Chartis Property, Chartis Specialty, Continental Casualty, Continental Insurance, Illinois National, Illinois Union, National Union, North River, OneBeacon, TIG, U.S. Fire, and Westchester)

94. The NFL and NFL Properties repeat and incorporate by reference the allegations set forth in Paragraphs 1 through 93 of these Second Amended Counterclaims and Cross-claims, inclusive, as though set forth in full herein.

95. The Class Settlement reflects a reasonable compromise entered into after negotiations conducted under court, mediator, and special master supervision and involvement and subsequently approved in an Amended Final Order and Judgment entered by the United States District Court for the Eastern District of Pennsylvania.

96. Because of the Insurers' repudiation of their coverage obligations, among other reasons, the NFL and NFL Properties were not required to seek or obtain the Insurers' consent to the Class Settlement. Nevertheless, on repeated occasions, the NFL and NFL Properties sought the Insurers' consent to enter into the Class Settlement.

97. In response to the NFL and NFL Properties' multiple requests for consent, ACE, Allstate, Alterra, American Guarantee, Arrowood, Century, Chartis Property, Chartis Specialty, Continental Casualty, Continental Insurance, Discover, Guarantee, Illinois National, Illinois Union, National Union, North River, OneBeacon St. Paul, TIG, Travelers Casualty, Travelers Indemnity, Travelers Property, U.S. Fire, and Westchester unjustifiability and in bad

faith failed to respond to one or more requests for consent, failed or refused to waive lack of consent as a defense, and/or refused to consent.

98. Regardless of whether the NFL and NFL Properties were required to seek or obtain the consent of such insurers and to the extent that such insurers are not deemed to have consented, the insurers identified in Paragraph 97, in unjustifiability and in bad faith failing to respond to one or more requests for consent, failing or refusing to waive lack of consent as a defense, and/or withholding their consent to the Class Settlement, breached their express and implied contractual duties, including their duties of good faith and fair dealing.

99. An actual and justiciable controversy exists between and among the NFL and NFL Properties and the insurers identified in Paragraph 97 concerning the those insurers' breach of their respective express and implied contractual duties, including their duties of good faith and fair dealing, by unjustifiably withholding consent to the Class Settlement.

100. The NFL and NFL Properties are entitled to a judicial determination and declaration that one or more of the insurers identified in Paragraph 97, to the extent that such insurers are not deemed to have consented, unjustifiably refused to consent to the Class Settlement thereby breaching their respective express and implied contractual duties, including their duties of good faith and fair dealing.

PRAYER FOR RELIEF

WHEREFORE, the NFL and NFL Properties respectfully pray for relief as follows:

1. On their First Cause of Action, the NFL and NFL Properties request that the Court enter judgment against the Duty to Defend Insurers, and award the NFL and NFL Properties:

(a) actual money damages, including consequential damages, according to proof at trial, plus interest according to law; and

(b) reasonable attorneys' fees and costs incurred in this action; and

(c) such other and further relief as this Court may deem just and proper.

2. On their Second Cause of Action, the NFL and NFL Properties request that the Court enter judgment against the Duty to Defend Insurers declaring that:

(a) Pursuant to the terms of the primary, duty-to-defend general liability insurance policies identified in Paragraphs 3 through 16 above, one or more of the Duty to Defend Insurers is obligated to fully defend the NFL and/or NFL Properties in and against the Underlying Lawsuits, and any other underlying claims that may become ripe in the future; and

(b) one or more of the Duty to Defend Insurers are obligated to reimburse the NFL and/or NFL Properties for their reasonable attorneys' fees and consequential damages incurred in this action.

3. On their Third Cause of Action, the NFL and NFL Properties request that the Court enter judgment against Discover, St. Paul, Pacific, Century, Hartford, Guarantee, North River, U.S. Fire, TIG, Illinois Union, ACE, Federal, Chartis Property, OneBeacon, Great Northern, Chartis Specialty, Illinois National, and National Union and award the NFL and NFL Properties:

(a) actual money damages, including consequential damages, according to proof at trial, plus interest according to law; and

(b) such other and further relief as this Court may deem just and proper.

4. On their Fourth Cause of Action, the NFL and NFL Properties request that the Court enter judgment against the Insurers declaring that, pursuant to the terms of the primary, umbrella, and excess liability insurance policies identified in Paragraphs 3 through 36 above, one or more of the Insurers is obligated to indemnify the NFL and/or NFL Properties for the costs incurred in connection with and damages imposed under the Class Settlement and the Amended Final Order and Judgment, and for all sums the NFL and/or NFL Properties may become legally liable to pay pursuant to any other settlement or judgment in the Underlying Lawsuits.

5. On their Fifth Cause of Action, the NFL and NFL Properties request that the Court enter judgment against ACE, Allstate, Alterra, American Guarantee, Arrowood, Century, Chartis Property, Chartis Specialty, Continental Casualty, Continental Insurance, Discover, Guarantee, Illinois National, Illinois Union, National Union, North River, OneBeacon St. Paul, TIG, Travelers Casualty, Travelers Indemnity, Travelers Property, U.S. Fire, and Westchester declaring that one or more of the above-identified insurers unjustifiably and in bad faith refused to consent to the Class Settlement in breach of their express and implied contractual duties, including the duty of good faith and fair dealing, to the extent that such insurers are not deemed to have consented.

February 15, 2017

COVINGTON & BURLING LLP

By: /s/ John E. Hall
John E. Hall

The New York Times Building
620 Eighth Avenue
New York, New York 10018
(212) 841-1000
jhall@cov.com

Mitchell F. Dolin
Michael E. Lechliter
850 Tenth Street, N.W.
Washington, D.C. 20001
(202) 662-6000
mdolin@cov.com
mlechliter@cov.com

*Attorneys for Defendants National Football
League and NFL Properties LLC*